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CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

## Notification

The 18th March, 2024

**No.13/2/92-HII(2)-2024/4449.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **66/2021** dated **14.12.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

RAVINDER, S/O SH. RAM NATH, H.NO.1055, SECTOR 56, CHANDIGARH. (Workman)

AND

1. M/S CHECKMATE SERVICE PVT. LTD., SCF NO. 128, PHASE-3-B2, DISTRICT MOHALI THROUGH ITS MANAGING DIRECTOR.
2. AXIS BANK LTD., AXIS BANK CURRENCY CHEST, SECTOR 34, CHANDIGARH THROUGH ITS BRANCH MANAGER (Management)

## AWARD

1. Ravinder, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 11.06.2016 the claimant-workman was appointed by management No.1 i.e. M/s Checkmate Services Pvt. Ltd., Mohali as Cash Sorter. The claimant-workman was deployed at the workplace of management No.2 i.e. Axis Bank Ltd., Axis Bank Currency Chest, Sector 34, Chandigarh. The claimant-workman remained there in the continuous employment up to 11.02.2021 when his services were illegally & wrongfully terminated by refusing of work. The claimant-workman was drawing ₹17,000/- per month as wages at the time of termination. On 12.02.2021 the claimant-workman went to attend his normal duty but he was refused work by management No.2 on the pretext that the management No.1 has asked them to refuse work to the worker. No reason of refusal of work was given to the claimant-workman by both the managements. The refusal of work, which amounts to termination, is reprehensible under Section 2(oo) of the ID Act. The management No.1 has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the claimant-workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For his reinstatement the claimant-workman served upon the management a demand notice dated 15.02.2021. After

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receiving the demand notice dated 15.02.2021, the management sent a letter dated 17.03.2021 to the claimant-workman, which was received by him on 21.03.2021 on the subject 'Final intimation on not reporting on duty'. In the letter the management alleged that the claimant-workman is continued unauthorized absent from duty from 12.02.2021. The services of the claimant-workman were terminated and he was asked to contact the HR for completion of full & final settlement. The claimant-workman vide his letter dated 22.03.2021 denied the alleged charge of absenteeism. The letter was duly received by the management. The claimant-workman further informed the management that he is ready to join his duty at Chandigarh with immediate effect. But the management till date has not replied the letter. The management neither denied the contents of the demand notice nor took the claimant-workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The management No.1 appeared before the Conciliation Officer, U.T. Chandigarh one time only and thereafter he did not appear before the conciliation on any date fixed for settlement. The termination is illegal, wrongful, motivated against the principles of natural justice and unfair labour practice. The claimant-workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the claimant-workman be reinstated with continuity of service along with full back wages and without any change in his service condition.

3. On notice, management No.1 contested the claim statement by filing written reply dated 12.11.2022 (filed on 06.12.2022) wherein it is stated that the date of commencement is correct but the answering management did not terminate any employee. It is denied as incorrect that both these managements refused work to the claimant-workman. Since no termination was done, thus retrenchment benefits, charge sheet, inquiry to be held before termination etc. are not applicable. The employees collectively absented and refused to come to work, the matter was taken up with disciplinary action, Checkmate Security Services have made sufficient representation at Labour Department. The applicant's plea that action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice is not acceptable. The claimant-workman's plea of demanding reinstatement with back wages, continuity of service and without any change in service condition etc. is not acceptable. No such intentions and acts were initiated by employer but all outstanding efforts were made to get the employee to work as the company had to face huge losses.

4. Management No. 2 contested the claim statement by filing separate written statement dated 01.11.2022 (filed on 01.11.2022) wherein preliminary objection is taken on the ground that the claim statement is not legally maintainable as there is privity of contract between claimant-workman and the answering management and the claimant-workman was never hired by the answering management.

5. On merits, it is denied for want of knowledge that on 11.06.2016 the claimant-workman was appointed as Cash Sorter by management No. 1. The answering management had hired the services of management No.1 but appointment and termination of any worker was the sole discretion of management No.1 and the answering management has no role to play in it. The alleged the claimant-workman was not on the roll of bank nor employee of the bank nor even any salary was paid to him by the answering management. No refusal, as alleged by the claimant-workman, was conveyed by the officials of the answering management. No alleged demand notice was ever served upon the answering management and also no notice was received by the answering management from the office of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. The claimant-workman never remained employee or worker of the answering management. Rest of the averments of the claim statement are denied being incorrect and prayer is made that claim statement may be dismissed with cost.

6. The claimant-workman filed rejoinder to the written statement of management No.1 on 17.01.2023 wherein contents of the written statement except admitted facts are denied and averments of claim statement are reiterated. Rejoinder to written statement of management No.2 was not filed.

7. From the pleadings of the parties, following issues were framed vide order dated 20.03.2023:-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits as prayed for ? OPW

3. Whether the claim statement qua management No.2 is not maintainable? OPM (management No.2)

4. Relief.

8. In evidence, claimant-workman Ravinder examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 08.09.2023 Learned Representative for the claimant-workman closed the evidence in affirmative.

9. On the other hand, management No.2 examined MW1 Amit Rajpal - Senior Manager, Axis Bank, Sector 34, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'.

10. Management No.1 examined MW2 Jaspal Singh - DGM (Banking) of M/s Checkmate Services Pvt. Ltd., Phase 3B-II, SAS Nagar Mohali, who tendered into evidence his affidavit vide Exhibit 'MW2/A' along with notary attested copies of documents Exhibit 'MW2/1' to Exhibit 'MW2/7'.

**Exhibit 'MW2/1'** is authority letter dated 28.03.2019 in Jaspal Singh issued by the Managing Director & Company Secretary of management No.1.

**Exhibit 'MW2/2'** is aadhar card of Jaspal Singh.

**Exhibit MW2/3'** is warning letter dated 12.02.2021 issued to the workman by the authorised signatory of management No.1 through courier.

**Exhibit 'MW2/3-A'** is original receipt of DTDC Courier Agencies.

**Exhibit 'MW2/4'** is absenteeism letter dated 22.02.2021 for not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

**Exhibit 'MW2/4-A'** is original postal receipt dated 24.02.2021.

**Exhibit 'MW2/5'** is letter dated 17.03.2021 for final intimation on not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

**Exhibit 'MW2/5-A'** is original postal receipt dated 19.03.2021.

**Exhibit 'MW2/6'** is original undelivered courier envelop bearing remarks 'refused'.

**Exhibit 'MW2/7'** is original undelivered register letter accompanied with acknowledgement bearing postal endorsement 'refused'.

11. In cross-examination of MW2 conducted by the workman, MW2 brought into evidence photocopy of movement order of the claimant-workman vide Mark 'I'.

12. On 16.11.2023 Learned Representative for management No.2 closed the evidence on behalf of management No.2. On 06.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed oral evidence. On 14.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed documentary evidence.

13. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below:-

**Issue No. 1 to 3:**

14. Onus to prove issue No.1 & 2 is on the workman and onus to prove issue No.3 is on management No. 2.

15. Under these issues, claimant-workman Joginder Pal examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity.

16. Management No.1 has examined MW2 Jaspal Singh - DGM (Banking), who vide his affidavit Exhibit 'MW2/A' deposed that he is working with management No.1 as Deputy General Manager (Banking) with Employee Code EMP/COR006558, Office at SCF 128, Phase 3B-II, SAS Nagar, Mohali from 06.05.2014 and he is personally aware of the facts of this case. Management No.1 is a company registered as per the provisions of the Company's Act, 1956. Management No.1 is engaged in business of providing security services, cash sorter services across the India to its customers on the basis of requirement and as per contract terms and agreement. Contrary to the workman's claim of illegal termination, he submits that the employment of the claimant-workman was not terminated rather transferred to another location in accordance with company's policies and operational requirements. The decision to transfer the claimant-workman was made after due consideration of company's business needs and without any malice or intent to cause harm to the claimant-workman. Due to exigency of work in the other location of management No.1, he as DGM (Banking) transferred the following four employees to their Ahmedabad office as per company's requirement:-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

These employees were transferred to their Ahmedabad office. They were given transfer letters given by hand to report to Checkmate, Ahmedabad Office under his instructions (as per company's requirement) on 11.02.2021 but they refused to accept. After that the transfer letter was sent by DTDC Courier on dated 12.02.2021 and they refused to accept again. These letters were given in person which they refused to accept. They were briefed regarding the transfer, which they refused to accept, return letter with remarks of refusal. The transfer letters were displayed on the notice board of the Axis Bank on same day i.e. on 11.02.2021. On 12.02.2021, he was on leave and was attending function at his home town, when he received a call from Mr. Ritesh Kumar - Branch Manager, Axis Bank, stating that no employee of Checkmate Services had reported for duty and when they and he had tried to contact their employee, they were absent. The claimant-workman stated that they will not come to work and all were not willing to come for duty any more. He informed about the mass absenteeism by the claimant-workman and repeated calls were received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employee who have not come on duty, the bank will not accept such un-authorised absence from their staff as bank work stuck up due to Cash Sorter not reporting for duty. He kept on calling absentee employees from his phone but his phone was not picked by any of the absent employees for the next 2 days i.e. 12.02.2021 to 14.02.2021. On resuming his office on 15.02.2021, he himself again tried to contact the absconding employees, only Mr. Ravi Kumar, EMP/CHD05592 and Mr. Pankaj Kataria, EMP/CHD/03936 picked the call and agreed to come to Mohali Office SCF 128, Phase 3B-II, SAS Nagar Mohali. On next day i.e. 16.02.2021 he himself tried to convince both the absconded employees to resume their duties as the bank officials were putting lot of pressure and the work stoppage had very negative impact on the bank services and their reputation and high penalty clause in the agreement. Both the employees Mr. Ravi Kumar and Mr. Pankaj Kataria were ready to understand and joined the duties but stated that other fellow employees had threatened them not to join the duty. Meanwhile they have appointed new staff in place of absconded employees to fill the bank requirement and their repetition as service provider as well to avoid high penalty of non-providing contractual staff as per agreement. They have also approached the absconded staff to join duty at the other place. They have requirement at Ahmedabad, for that they had sent the letter through RP/AD post letter dated 11.02.2021 as well sent the absenteeism letters on 22.02.2021 and final letter on 17.03.2021 to the claimant-workman to join duty as his services has not been terminated nor any violation of his appointment services conditions. In the case of Namrata Verma Versus the State of Uttar Pradesh and Others, Hon'ble Supreme Court of India in case number Special Leave to Appeal (C) No(s).36717/2017 it was established that employer has the right to transfer employee as per the business requirement of the employer. He asserts that the management has never terminated the services of the

claimant-workman. On the contrary the management has provided multiple opportunities to the claimant-workman to re-join duty even after a mass absconding incident incurred. The claimant-workman however failed to respond or re-join and instead engaged in mass absconding without any prior intimation. This action appears to be an attempt to harass both the managements to coercive tactics by the claimant-workman. The management remains willing to offer employment as there has been no formal termination of services. Consequently, there is no basis for claims related to back wages or any other form of compensation, given that the service has not been terminated. MW2 supported his oral version with documents Exhibit 'MW2/1' to Exhibit 'MW2/7' and Mark 'M1'.

17. The management No.2 examined MW1 Amit Raj Pal - Senior Manager, Axis Bank, who vide his affidavit Exhibit 'MW1/A' wherein he deposed that the present alleged claim filed by the claimant against management No.2 is legally maintainable as there is no privity of contract between claimant and management No.2 and the claimant was never hired by management No. 2. Management No.2 had hired the services of management No.1 but the appointment and termination of any worker was the sole discretion of management No.1. Management No.2 had no role to play in it. The alleged claimant was not on the roll of the bank, nor employee of the bank nor even any salary was paid to him by management No.2. No notice as alleged was ever served upon management No.2 and also no notice was received by management No.2 from the office of Additional Labour Commissioner-cum-Conciliation officer, U.T. Chandigarh. The claimant never remained employee or worker of management No.2.

18. From the oral as well as documentary evidence led by the parties it comes out that undisputedly the claimant-workman was appointed on 11.06.2016 as Cash Sorter by management No.1 and was deployed at the work place of management No.2. In this regard, AW1 when to put to cross-examination by management No.2 stated that Axis Bank / management No.2 did not issue him any appointment letter and termination letter /order. He was deployed with the Axis Bank /management No.2 by M/s Checkmate i.e. management No.1. MW1 (witness of management No.2) when to put to cross-examination by the workman admitted as correct that the Axis Bank has contract with the Checkmate Services for providing the manpower. MW1 admitted as correct that the Checkmate Services provided about 15 workers including the claimant of the present case for deployment with Chandigarh Branch of Axis Bank. MW1 stated that bank was not maintaining the attendance of contractual workers. The Supervisor of Checkmate was maintaining their attendance. The bank had not been supervising the disbursement of wages and provident fund etc. of the contractual workers. MW2 Jaspal Singh (witness of management No.1) when to put cross-examination by the workman stated that the agreement of management No.1 with the Axis Bank Ltd. /management No.2 was at central level and there was no local agreement. Under the said agreement, management No.1 provided 18 workers to management No.2 around year 2016. From the above-mentioned version of AW1, MW1 and MW2 it is duly established on record that management No.1 i.e. M/s Checkmate Services Pvt. Ltd. is service provider, who under the contract has provided security services and Cash Sorter services to management No.2 i.e. Axis Bank, Sector 34, Chandigarh and the claimant-workman was deployed by the management No.1 at the work place of management No.2 as a Cash Sorter. Since management No.1 maintained the record of attendance and supervision of work of claimant-workman through its Supervisor, thus the claimant-workman was under the direct employment of management No.1 and was a contractual worker deployed with management No.2. There is no direct relationship of employer-employee between management No. 2 and claimant-workman. Since management No.2 has hired the services of claimant-workman from its service provider i.e. management No.1, therefore, management No.2 was necessary party, being principal employer, and the claim qua management No.2 is duly maintainable.

19. Admittedly, the authority to appoint, transfer and terminate the contractual employee (herein claimant-workman) was with the service provider i.e. management No.1. Learned Representative for the claimant-workman argued that the claimant-workman remained in continuous employment of the management No.1 from the date of appointment i.e. 11.06.2016 up to 11.02.2021, thus completed 240 days of continuous service in 12 calendar months preceding termination of his services (service being verbally terminated on 12.02.2021). The claimant-workman has alleged that his last drawn wages were ₹17,000/- per month. In this

regard MW2 (witness of management No.1) was put to cross-examination by workman stated that there is no dispute with regard to the date of appointment, amount of monthly salary and the date of dispensing with of their services. MW2 further stated that all the workers including the workman had continuously worked for more than 240 days in 12 calendar months preceding their absence from duty.

20. Management No.1 has taken the plea that 15 contractual workers were deployed with management No.2. On 11.02.2021, out of 15 contractual workers, 4 workers namely Ravinder (Ravinder, workman in the present case), Joginder Pal, Suresh Kumar and Ajay Kumar were transferred to Ahmedabad. 4 workers, who were transferred, refused to accept the transfer letter and refused to join at Ahmedabad. The transfer-cum-movement order was also affixed on the notice board of management No.2 i.e. Axis Bank Limited. In order to put pressure upon the management No.1 to cancel the transfer order of four employees all 15 contractual workers collectively absented from duty w.e.f. 12.02.2021. After extensive follow-ups, 2 workers returned to duty with the same employment terms & conditions whereas the remaining 13 including the workman of the present case did not resume duty. The workman Ravinder failed to report on duty at Ahmedabad as directed vide movement order Mark 'M1'. It is further argued by Learned Representative for management No.1 that M/s Checkmate Service Pvt. Ltd. has not terminated the service of any of the workman in any manner. Management No.1 has followed due procedure issuing absenteeism letters and reminders, emphasising the company's intent for workman to resume duty. Management No.2 made various efforts to personally serve the movement-cum-transfer order to the claimant-workman but he refused to receive. Management No.1 also issued warning letter dated 12.02.2021 / Exhibit 'MW2/3' through courier vide receipt Exhibit 'MW2/3A', issued another absenteeism letter dated 22.02.2021 / Exhibit 'MW2/4' vide postal receipt Exhibit 'MW2/4A' and final intimation for not reporting on duty vide letter dated 17.03.2021 Exhibit 'MW2/5' through registered post vide Exhibit 'MW2/5A'. Despite issuance of various letters, the claimant-workman did not join back the duty, thus, the claimant-workman himself abandoned the job, though his services were never terminated by management No.1. The workman failed to report to his duty at the work place without any prior notice or explanation which is a clear violation of company's policy and established work expectations. The employer has the inherent right to manage its work force including making decisions regarding re-location. Management No.1 has acted in accordance with its established policies and procedures which were communicated to all the employees by all means to join duty.

21. On the other hand, Learned Representative for the workman contended that neither the original movement order / transfer order nor carbon copy of the same is brought into evidence by management No.1 despite availing opportunity to produce the same. Furthermore, the alleged transfer order / movement order is violation of Section 9-A of the ID Act and in contravention to The Fourth Schedule to Section 9-A of the ID Act.

22. As proved from cross-examination of MW2 Jaspal Singh (witness of management No.1), the workman had continuously worked for more than 240 days in 12 calendar months preceding his alleged absence from duty, the claimant-workman fulfills the requirement of continuous service as defined in Section 25-B of the ID Act. Once the workman is covered under Section 25-B of the ID Act, then the provision of Section 25-F of the ID Act stands attracted. For better appreciation Section 25-F of the ID Act is reproduced as below:-

***"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-***

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*

- (c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

23. Section 25-F of the ID Act lays down certain conditions which are precedent to retrenchment of workman. In the present case, the management No. 1 has taken the plea that the claimant-workman absented from duty w.e.f. 12.02.2021. As per plea of management No.1, the claimant-workman was transferred to Ahmedabad by issuing movement order but the claimant-workman failed to report on duty at Ahmedabad as per the directions given in the movement order. MW2 Jaspal Singh in his cross-examination (recorded on 30.11.2023) denied the suggestion as wrong that vide letter dated 17.03.2021 / Exhibit 'MW2/5' the services of the workman were terminated. To my opinion, the denial on part of MW2 that the management did not intend to terminate the services of the workman by issuing letter dated 17.03.2021 / Exhibit 'MW2/5' is not acceptable because in his further cross-examination MW2 admitted as correct that vide letter Exhibit 'MW2/5' the workman was directed to complete his clearance formalities for full & final settlement. The aforesaid admission on part of MW2 would suggest that the management No.1 intended to effect full & final settlement with the workman, which can be done only when the workman is relieved from service and not during continuity of his service.

24. As far as movement / transfer order is concerned, MW2 in his cross-examination (conducted by the workman) recorded on dated 30.11.2023 stated that the workers Ravinder, Joginder Pal, Suresh Kumar S/o Milap Chand and Ajay were transferred from Chandigarh to Ahmedabad. He is in possession of carbon copies of movement orders issued to aforesaid workers directing them to report at the transferee station. Today, he has not brought the copies of the movement orders. MW2 further stated that except the movement orders, there is no other separate transfer orders of workers. Remaining cross-examination of MW2 on 30.11.2023 was deferred for producing the alleged movement order by the witness. MW2 when recalled for his remaining cross-examination on 06.12.2023, stated that original and the carbon copies of the movement order / orders are not traceable. He has brought photocopy of movement order relating to workman Ravinder and the same is Mark 'M-1'. In this manner management No.1 despite availing opportunity failed to sufficiently prove into evidence the alleged movement / transfer order of the claimant-workman. The document Mark 'M-1' is a photocopy, its original or carbon copy is produced into evidence, therefore, no authenticity is attached to Mark 'M-1'. Above all management No.1 in its written statement nowhere pleaded that the claimant-workman was ever issued any movement order / transfer order and that the claimant-workman did not report on duty at Ahmedabad. It is not the case of management No.1 that they have ever received any intimation from Branch Office of management No.1 at Ahmedabad that the claimant-workman did not report on duty as per the movement order. In this regard, MW2 in his cross-examination dated 30.11.2023 stated that no intimation was received from their branch office at Ahmedabad that the workman did not turn up to join duty. MW2 Jaspal Singh in his cross-examination stated that in the written reply filed by management No.1, it is nowhere mentioned that the worker was transferred from Chandigarh to some other place. MW2 in his cross-examination admitted as correct that there is no reference of Ahmedabad in letter Exhibit 'MW2/3' to Exhibit 'MW2/5'.

25. The management's plea that the workman was transferred as per company's policy is devoid of merits because there is no evidence of management No.1 to prove the fact that the service of the workman was transferrable. The nature of job being transferable or non-transferable can be ascertained either from the appointment letter or certified standing orders of the company (herein management No. 1). In the present case, neither there is any appointment letter of the workman issued by management No.1 nor there is any certified standing orders of management No.1. It is not case of the management No.1 that there was any settlement between the workman and management No.1 relating to transfer policy. MW2 in his cross-examination stated that the employees deputed in the territory U.T. Chandigarh are issued appointment letters and transfer orders from Chandigarh office of M/s Checkmate Services Pvt. Ltd./management No.1. As discussed above, in the present case neither any appointment letter nor any transfer order is proved into evidence. In the absence of appointment letter, Certified Standing Orders and any settlement between the parties, The Fourth Schedule and Section 9-A of the ID Act would be attracted if the transfer of the workman results in change of service conditions.

26. Undisputedly, the workman was drawing `17,000/- as wages per month at the time of termination. MW2 in his cross-examination stated that the workman was verbally told that wages to him at Ahmedabad will be paid as per the minimum wages of that state. Management No.1 did not prove into evidence the Minimum Wage List of Ahmedabad (Gujarat). However, during course of arguments Learned Representative for the management No.1 failed to controvert the contention of Learned Representative for the workman that minimum wages at Ahmedabad are much lesser than the monthly wages drawn by the workman at Chandigarh. As per Section 9-A of ID Act, no employer who proposes to effect any change in the condition of service applicable to any workman in respect of any matter specified in Fourth Schedule, shall effect such change,—

- (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
- (b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change -

- (a) .....
- (b) .....

27. The Fourth Schedule of the ID Act incorporates conditions of service for change of which notice is to be given. The relevant conditions mentioned at serial No.9 and 11 of The Fourth Schedule of ID Act are reproduced as below:—

- "9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders.*
- 11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift (not occasioned by circumstances over which the employer has no control)*

28. MW2 in para 5 of his affidavit Exhibit 'MW2/A' deposed that due to exigency of work in other locations of respondent No.1 requirement, he as the DGM Banking, transferred the following employees to their Ahmedabad office as per company requirement:—

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

29. In the present case, first of all the aforesaid plea taken by MW2 in his examination-in-chief by way of affidavit Exhibit 'MW2/A' is beyond pleadings. Secondly, MW2 in para 8 of his affidavit Exhibit 'MW2/A' deposed that he informed about the mass absenteeism by the applicant and repeated calls received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employees, who are not coming on duty, the bank will not accept such un-authorised absence from their staff, as Bank work was stuck up due to Cash Sorter not reporting for duty. The aforesaid version of MW2 is also beyond pleadings. Besides Axis Bank / management No.2 in its written statement / reply nowhere mentioned that Mr. Ritesh - Branch Manager, Axis Bank telephonically informed the management No.1 about any un-authorised absence of the workman from duty. Management No.1 and 2 did not examine Mr. Ritesh - Branch Manager in their evidence. Moreover, there is no documentary evidence on record to show the company's requirement at Ahmedabad office of management No. 1. Under these circumstances, the transfer of the workman from Chandigarh to Ahmedabad on lesser monthly wages amounts to change in his service conditions. Section 9-A and The Fourth Schedule of the ID Act prohibits imposing any change in service condition without notice. Section 9-A of the ID Act requires employer proposing to adversely change certain service conditions of covered workman to provide notice of 21 days of the proposed change to the impacted workman. In the present case, it is own plea of management No.1 that transfer order was of 11.02.2021 directing the workman to join at

other location at Ahmedabad on 12.02.2021. Before issuing the alleged transfer order /movement order management No.1 failed to provide notice of 21 days to the concerned workman, which is violation of The Fourth Schedule and Section 9-A of the ID Act.

30. If for the sake of arguments, it is assumed that the claimant-workman absented from duty w.e.f. 12.02.2021, then also at the most it amounts to misconduct and since the workman fulfills the requirement of Section 25-B of the ID Act, thus management No.1 was bound to comply with the conditions incorporated in Section 25-F of the ID Act. But management No.1 has failed to comply with mandatory conditions as laid down in Section 25-F of the ID Act. In this regard, MW2 when put to cross-examination by the workman stated that no charge sheet was served to the workman for his alleged absence from duty. Neither any preliminary inquiry nor any regular domestic inquiry was conducted against the workman. No retrenchment compensation was paid to the worker. From the aforesaid version of MW2, it is established that management No.1 has violated the provisions of Section 25-F of the ID Act. The judgment referred by Learned Representative for the workman reported in **2014(11) SCC 85** titled as **Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Limited** is applicable to the facts of the present case to an extent. The relevant portion of the judgment is reproduced as below:—

*"Evidently, the above said mandatory procedure has not been followed in the present case. Further, it has been held by this Court in the case of Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat, 2010(3) S.C.T. 319 : 2010(5) SCC 497 as under:-*

*13.... no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity - State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 Supreme Court 610, Bombay Union of Journalists v. State of Bombay, (1964) 6 SCR 22, State Bank of India v. N. Sundara Money, (1976) 1 SCC 822, Santosh Gupta v. State Bank of Patiala, (1980) 3 SCC 340, Mohan Lal v. Management of M/s. Bharat Electronics Ltd., (1981) 3 SCC 255, L. Robert D'Souza v. Executive Engineer, Southern Railway, (1982) 1 SCC 645, Surendra Kumar Verma v. Industrial Tribunal, (1980) 4 SCC 443, Gammon India Ltd. V. Niranjana Das, (1984) 1 SCC 509, Gurmail Singh v. State of Punjab, 1991(3) S.C.T. 608 : (1991) 1 SCC 189 and Pramod Jha v. State of Bihar, 2003(2) S.C.T. 296 : (2003) 4 SCC 619. This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometimes as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his services was not terminated."*

31. MW2 Jaspal Singh, witness of Management No.1 / service provider during his cross-examination expressed his readiness to re-join the worker but refused to give him the benefit of continuity of service and back wages. In this regard, MW2 when put to cross-examination by the workman stated that we are ready to take in service absentee workers as per availability of vacancy at Chandigarh and nearby stations such as

Ludhiana, Jalandhar and Panchkula. MW2 further stated that they are not ready to re-join the workers with continuity of service. They are also not ready to pay back wages for the period of their absence from duty. MW2 denied the suggestion as wrong that re-joining of a workman without continuity of service amounts to fresh appointment. To my opinion, the conditional offer of management No.1 / service provider to re-join the workman as per availability of the vacancy and without the benefits of continuity of service & back wages is unjustified because as discussed above, in this case, the termination of services of the workman is held illegal being in violation to Section 25-F of the ID Act. In case of wrongful termination of service, reinstatement with continuity of service and back wages is a normal rule. The workman is entitled to the relief of reinstatement with continuity of service under the same terms & conditions as existed before his termination.

32. As far as back wages are concerned, the claimant-workman has alleged that he remained unemployed during the period from the date of termination till date. On the other hand, none of the managements have taken plea of gainful employment in their respective written statements. However, it is argued by Learned Representative for management No.1 that as per the judgment of Hon'ble Supreme Court in *Civil Appeal No.5390 of 2019 decided on 11th July 2019* tilted as *Chief regional Manager, United India Insurance Company Limited United India Insurance Company Limited versus Siraj uddin Khan*; the principle of 'no work, on pay' applies, In case, the workman is to be reinstated he is not entitled to back wages. To my opinion, the judgment referred (*supra*) by Learned Representative for management No.1 is not applicable to the facts of the present case in view of the judgment referred by Learned Representative for the workman tilted as *P.G.I. of M.E. and Research Versus Raj Kumar*, report in *2001(2) SCC 54*. Under the circumstances, the workman is held entitled to 50% back wages.

33. In the view of discussions made above, termination of the workman is held illegal being in violation to Section 25-F of the ID Act as such the workman is entitled to reinstatement with continuity of service and 50% back wages.

34. Accordingly, issue No. 1 & 2 is decided in favour of the workman and against management No.1. Issue No.3 is decided against management No.2 and in favour of the workman.

**Relief :**

35. In the view of foregoing finding on the issues No.1 & 2 above, this industrial dispute is allowed qua management No.1. The workman is entitled to reinstatement with continuity of service and 50% back wages. Management No.1 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which management No.1 is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 14.12.2023.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT**Notification**

The 18th March 2024

**No. 13/2/95-HII(2)-2024/4433.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **12/2023** dated **05.02.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

CHANDIGARH GOVT. TRANSPORT WORKER'S UNION, CTU, CHANDIGARH (REGD.& RECOGNISED) THROUGH ITS PRESIDENT AND SECRETARY ON BEHALF OF SH. NISHAN SINGH - CONDUCTOR NO.657, CTU, CHANDIGARH (Workman)

AND

THE DIVISIONAL MANAGER CHANDIGARH TRANSPORT UNDERTAKING, U.T. CHANDIGARH. (Management)

**AWARD**

1. The Chandigarh Govt. Transport Worker's Union, CTU Chandigarh (*here-in-after referred "workers' union"*) has presented industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947 (*here-in-after in short called "ID Act"*).

2. Briefly stated the averments of claim statement are that Nishan Singh - Conductor No. 657, CTU Chandigarh (*here-in-after referred "workman"*) joined his services on regular basis on 08.04.1988. Since then workman has been performing his duties regularly and no adverse ACR was ever conveyed to him throughout his service. Chandigarh Administration adopted all the service rules including pay rules as were applicable in the State of Punjab by framing rules known as Chandigarh Employees Conditions of Service Rules, 1992 and were made applicable w.e.f. 1991. It was made clear in these rules that any amendment made in existing rules or fresh rules framed by State of Punjab shall be automatically extended to employees of Chandigarh Administration. State of Punjab issued instructions dated 25.09.1998 in which it was provided that higher pay scales in the form of ACP scales shall be granted to its employees on completion of 8, 16, 24 & 32 years of service in the same cadre if during this period he has not got any promotion and promotional pay scale during such period. These instructions were further replaced by instructions dated 03.11.2006 in which it was decided to grant these ACP scales on completion of 4, 9 & 14 years of service. Further employees were asked to give their opinions either to adopt new rules or to continue to take benefits under the old scheme. Workman had given option to grant him benefits under instructions dated 03.11.2006. Now the workman has completed more than 30 years of service. The workman is entitled for 1st ACP scale w.e.f. 08.04.1996, 2nd ACP scale w.e.f. 01.08.2004, 3rd ACP scale w.e.f. 08.04.2012 and 4th ACP scale w.e.f. 08.04.2020 as per the instructions dated 25.09.1998 issued by the State of Punjab and adopted by Chandigarh Administration. In similar manner, workman is entitled for 1st ACP scale w.e.f. 08.04.1992 on completion of 4 years of service, 2nd ACP scale w.e.f. 08.04.1997 on completion of 9 years of service, 3rd ACP scale w.e.f. 08.04.2002 on completion of 14 years of service as per the instructions dated 03.11.2006 but workman have been denied ACP scales as per the instructions dated 25.09.1998 as well as per the instructions dated 03.11.2006 from the due date for the reasons best known to the department. The workman was fully eligible to the benefits of these above mentioned ACP scales but the same have been illegally denied to him. For the grant of ACP scales only ACR of the employee is to be considered. ACRs of the workman remained good throughout and no adverse ACR was ever conveyed to the workman in his entire service, therefore, all the ACRs of the workman are deemed to be good. It is settled law that if any, adverse report is not conveyed to employee in order to make representation against the same, in that case, said ACR shall be deemed to be good. Further it is settled law that if the employee is not found eligible from due date for grant of ACP scale, in that case, he has to be considered from the date he became eligible for

the same. Throughout service of workman no major punishment was given to him. Only minor punishments were imposed. It is settled law that due to minor punishment, promotion to higher post and placement in ACP scale cannot be denied. The workman is also entitled to promotion to the post of Sub-Inspector and then to the post of Inspector as per his seniority. Though juniors have been promoted, but promotion have been denied to workman. The workman was fully eligible for promotion as per seniority from the date juniors were promoted because nothing adverse was ever conveyed to him throughout his service. Further promotion cannot be denied to the workman due to passing of orders of minor punishments against him. The pay of the workman has not been fixed as per law from time to time. The date of increments have been postponed without any basis and effect to the punishment of stoppage of increments without cumulative effect, have not been given as per law. As per note 5 given under Rule 9-A of Punjab Civil Services Rules (Volume - I), it is provided that the increment has to be restored from the date the effect of the punishment is over. The note 5 reads as under :—

*"Note 5:- where the normal increment is withheld for specific period and period of such punishment have expired after 1st day of the month the increment shall be restored from the penalty ceased."*

The office has not given the effect of the punishment as per rules and restoration of increment was extended by one year more. In case, one increment is stopped without cumulative effect but the department restored the same after two years period from the date of passing of such order, it amount to double punishment. From the perusal of service record of workman, it is submitted that the managements have not granted annual increments to the workman from due date and have been postponing the same by excluding the period of suspension for the purpose of grant of annual increments which act is illegal and arbitrary. The management has been denying the pay of suspension period above the subsistence allowance in those cases also where ultimately minor punishments were imposed. In case, if ultimately only minor punishment is imposed in that case the employee is entitled for full pay of suspension period and is also entitled for the increment from the due date as per law. The workman has made several requests to the management to grant the above mentioned benefits to him but all in vain. Prayer is made that reference may be accepted and ACP scales from the due date may be granted to the workman, the workman may be promoted to the post of Sub-inspector and Inspector from the date juniors have been promoted and to pay full pay of suspension period and the difference of pay along with interest @ 9% per annum.

3. On notice, the management contested the claim statement by filing written reply on 16.05.2023 wherein preliminary submissions are made to the effect that the present claim statement is deserves to be dismissed as the workman is hiding the material facts from this Court as workman is a habitual offender and has been awarded various punishments in frauds committed by him at various occasions. History sheet in respect of Shri Nishan Singh - C.No.657 is as follows:—

Sr. No.	Case	Punishment
1	Placed under suspension vide O/o No. 293 dt 21.08.1989 and reinstated in service vide O/o No.277 dt 07.12.1990 vide O/o No.4145 dt 06.07.2011	Two increment stopped without C.E. his suspension period w.e.f. 21.8.89 to 06.12.90 be limited to the grant of subsistence allowances only vide O/o No. 4145 dt. 06.07.2011
2	Placed under suspension on 12.11.1992 vide O/o No. 780 dt.18.11.1992 and reinstated in service vide O/o No. 49 dt.25.01.1993	Two increment stopped with C.E his suspension period w.e.f. vide O/o No.1843 dt 24.02.1995
3	Absent period 30.05.1992 to 14.06.1992	Treated as without pay leave vide order no. 32 dt 06.01.1993
4	Placed under suspension vide O/o No. 136 dt.10.03.1995 and reinstated in service vide O/o No.158 dt. 16.03.1995	One increment stopped without C.E. and U/S Period be limited to the grant of subsistence allowances only vide O/o 676 dt. 21.6.2002
5	Placed under suspension vide O/o No. 364 dt.13.06.1995 and reinstated in service vide O/o No.400 dt. 05.07.1995	One increment stopped with cumulative effect and U/S period be limited to the grant of subsistence allowances only vide O/o No.322 dt. 08.03.2002

6	Absent period w.e.f 28.07.1995 to 03.08.1995	Treated as Without Pay Leave vide o/o no. 804 dt. 13.09.1995
7	Absent period w.e.f 29.08.1995 to 21.09.1995	Treated as Without Pay Leave vide o/o no. 878 dt. 27.09.1995
8	Placed under suspension vide O/o No. 693 dt. 10.11.1995 and reinstated in service vide O/o No.650 dt. 13.12.1996	Two increment stopped with C.E.and U/S period limited to the grant of S.A. only vide O/o 561 dt. 27.06.2001
9	Absent period w.e.f 15.08.1997 to 04.09.1997	Treated as Without Pay Leave vide o/o no. 616 dt. 18.09.1997
10	Placed under suspension vide O/o No,1830 dt. 01.03.1999 and reinstated in service vide O/o No.1950 dt. 06.04.1999	Two increments stopped without C.E. and suspension period be limited to the grant of S.A. Only vide order no. 234 dt. 23.03.2001
11	Placed under suspension vide O/o No. 125 dt 28.02.2000 and reinstated in service vide O/o No.222 dt. 29.03.2000	Service censured and U/S period w.e.f. 28.02.2000 to 29.03.2000 treated as limited subsistence allowance only vide O/o No.1069 dated 29.11.2000
12	Placed under suspension vide O/o No. 148 dt.07.03.2001 and reinstated in service vide O/o No.400 dt. 27.04.2001	One increment stopped without C.E. and suspension period be limited to the grant of S.A only vide order no.738 dt.27.08.2001
13	Issue the Charge sheet vide O/o 2722 dated 12.02.2001 without First Aid Box	One increment stopped without cumulative effect vide O/o No. 468 dt. 22.5.2001
14	Placed under suspension vide O/o No. 339 dt. 13.05.2002 and fraud Rs 35/- and reinstated in service vide O/o no. 289 dt. 12.6.2002	His two increment stopped without C.E. and suspension period be limited to the grant of S.A only vide order no.540 dt. 29.04.2003
15	Placed under suspension vide O/o No. 552 dt. 22.10.2002 and reinstated in service vide O/o No. 640 dt 12.12.2002	Two increment stopped without C.E. and suspension period be limited to the grant of S.A only vide order no. 930 dt.23/07/2003
16	Placed under suspension vide O/o No. 346 dt.10.07.2003 and reinstated in service vide O/o No.391 dt. 01.08.2003	One increment stopped without C.E. and suspension period be limited to the grant of S.A only vide order No.1372 dt. 31.10.2003
17	Placed under suspension vide O/o No. 421 dt.12.01.2005 and reinstated in service vide O/o No. 27 dt. 25.01.2005	His one increment stopped without C.E and suspension period be limited to the grant of S.A only vide order no.482 dt.25.05.2005
18	Placed under suspension vide O/o No. 46 dt. 16.03.2007 against fraud Rs. 52/- dt. 15-03-2007 and reinstated in service vide O/o No. 07 dt. 14.05.2007	His one increment stopped without C.E and suspension period be limited to the grant of S.A only vide order no. 706 dt. 20.08.2010
19	Placed under suspension vide O/o No. 121 dt.24.06.2008 against fraud Rs. 64/- dt. 19.06.2008 and reinstated in service vide O/o No. 187 dt. 09.09.2008	His two increment stopped with C.E and suspension period be limited to the grant of S.A only vide order no. 346 dt. 17.05.2010
20	Placed under suspension 19.03.2012 to 03.05.2012	His One increment stopped with C.E.and suspension period be limited to the grant of S.A only vide O/o 2001 dt 09.09.2016

The facts submitted by the workman are *supprescio veri* and *exprescio falsi* to the extent that the workman has completely suppressed true & material facts in the present statement of claim. As such, the workman has approached this Industrial Tribunal-cum-Labour Court with unclean hands. The workman has not availed the remedy of appeal under the Punishment & Appeal Rules. The present statement of claim is premature. As per letter No.7/60/2006-5PPI/15963, Government of Punjab, Department of Personnel, para 4(b) "*The procedure for assessing the work and conduct for placement in the higher scale shall be the same as applicable to the case of promotion. The placement in higher scale shall be allowed only to these employees whose overall service record during the span of satisfactory service, is adjusted as 'Good' and the employee is otherwise suitable for promotion. 'Good' record shall mean that more than 50% Annual Confidential Reports are good and out of last three years report, atleast two should be 'Good'.*" The ACR remarks of the workman w.e.f. 1988-89 to 2021-22 are mentioned as below :—

Year	Remarks	Punishment
1988-1989	Good	1. U/s period 21.08.1989 to 06.12.1990=472 days (Limited) Total=472 days 15 M 22 days
1989-1990	Average	<b>Decided:-</b> Two increment stopped without C.E. his suspension period w.e.f 21.8.89 to 6.12.90 be limited to the grant of subsistence allowance only vide O/o No. 4145 dt 06.07.2011
1990-1991	Good	2. Without Pay Leave 30.05.1992 to 14.06.1992=16 Days
1991-1992	Average	3. U/s period 12.11.1992 to 25.01.1993=75 days (Limited) <b>Decided:-</b> Two inc. stop with vide o/o no. 1843 dated 24.02.1995
1992-1993	Below Average	4. U/s period 10.03.1995 to 16.03.1995=7 days (Limited) <b>Decided:-</b> One increment stopped without C.E and U/S Period be limited to the grant of subsistence allowance only vide O/o 676 dt. 21.06.2002 5. U/s period 13.06.1995 to 05.07.1995=23 days (Limited) <b>Decided:-</b> One increment stopped with cumulative effect and U/S period be limited to the grant of subsistence allowance only vide O/o No.322 dt. 08.03.2002 6. U/s period 10.11.1995 to 13.12.1996=399 days (Limited) <b>Decided:-</b> Two increments stopped with C.E. and U/S period limited to the grant of S.A only vide O/o 561 dt. 27.6.2001
1993-1994	Average	
1994-1995	Average	
1995-1996	Average	7. Without Pay Leave 05.08.1997 to 12.08.1997 =08 days 8. Without Pay Leave 15.08.1997 to 04.09.1997=21 days
1996-1997	Average	
1997-1998	Average	

1998-1999	Good	9. U/s period 01.03.1999 to 06.04.1999=37 days (Limited) <b>Decided:-</b> Two inc. stop without vide o/o no. 243 dated 20.03.2001
1999-2000	Average	10. U/s period 28.02.2000 to 29.03.2000=30 days (Limited) <b>Decided:-</b> Service censured and U/S period w.e.f 28.02.2000 to 29.03.2000 treated as subsistence allowance only vide O/o No.109 dated 29.11.2000 11. Without Pay Leave 15.09.2000 to 29.10.2000=45 days
2001-2002	Good	12. U/s period 07.03.2001 to 27.04.2001=52 days (Limited) <b>Decided:-</b> One increment stopped without C.E. and suspension period be limited to the grant of S.A only vide order no.738 dt. 27.08.2001
		13. Chargesheet issued vide o/o No. 2722 dated 12.02.2001 One increment stop without cumulative effect vide O/o No. 468 dated 22.05.2001
2002-2003	Average	14. WPL 02.04.2002 to 04.04.2002=3 days 15. U/s period 13.05.2002 to 12.06.2002=31 days (Limited) <b>01 M 01 day</b> <b>Decided:-</b> Two increment stopped without C.E and suspension period be limited to the grant of S.A only vide O/o No. 540 dated 29.04.2003 16. U/s period 22.10.2002 to 12.12.2002=52 days (Limited) <b>Decided:-</b> Two increments stopped without C.E and suspension period to limited to grant of S.A only vide order no. 930 dt. 23/07/2003
2003-2004	Good	17. U/s period 10.07.2003 to 31.07.2003=23 days (Limited) <b>Decided:-</b> One increments stopped without C.E and suspension period be limited to the grant of S.A only vide order no. 1372 dt. 31/10/2003
2004-2005	Good	18. U/s period 12.01.2005 to 25.01.2005=14 days (Limited) <b>Decided:-</b> One increments stopped without C.E and suspension period be limited to the grant of S.A only vide O/o no.482 dated 25.05.2005
2005-2006	Good	
2006-207	Average	19. U/s period 16.03.2007 to 13.05.2007=59 days (Limited) <b>Decided:-</b> One increment stop without C.E and suspension period be limited to the grant of S.A vide O/o No. 706 dated 20.08.2010
2007-2008	Average	
2008-2009	Average	20. U/s period 24.06.2008 to 09.09.2008/=78 days (Limited) <b>Decided:-</b> Two increments stopped with C.E and suspension period be limited to the grant of S.A only vide O/o No. 346 dated 17.05.2010
2009-2010	Good	
2010-2011	Good	

2011-2012	Average	21. U/s period 19.03.2012 to 02.05.2012=45 days (Limited) <b>Decided:-</b> one increment stopped with C.E vide O/o No.2001 dated 09.09.2016
2012-2013	Good	
2013-2014	V. Good	
2014-2015	Good	
2015-2016	Average	
2016-2017	Good	
2017-2018	Good	
2018-2019	V. Good	
2019-2020	Good	
2020-2021	V. Good	
2021-2022	Good	
Date of appointment :- 04.08.1988 +04 04.08.1992 U/s period 21.08.1989 to 06.12.1990 days 22.03.0001 The departmental inquiry pending 30.07.1993 decided on 06.07.2011 ACR 1992-93 Below Avg. <u>+1</u> 30.07.1994 22 increment stop (with & without C. effect) +22 30.07.2016 08.02.0002 Total differ period 788 days 08.09.2018		
26 Months 08 days say 08.10.2018, But the punishment effect over on Say 02 year 2 month 08 days 31.12.2022		
As per the notification of the Govt. of Punjab, Department of Finance (Finance Personnel-I Branch) insured vide No.FD-FP-10 ACP(DACP)/050/2021-5FP dated 15.12.2021 duly adopted by the Chandigarh Administration, Department personnel vide No.28/43-IH(7)-2022/3781 dated 04.03.2022 that ACP / DACP may not be granted after 01.07.2021 of the officials.		

The ACP was not granted to the workman, not only for the reason that his ACRs are not up to the mark but the major reason is the history of currency of punishment awarded to the workman. The pay of the workman has been re-fixed after currency of the punishment was over. The order in this respect stand issued on 12.08.2022 and further conveyed to workman on the same date.

4. Further on merits, it is admitted as correct that the workman joined his services on regular basis on 08.04.1988 and since then he has been performing his duties regularly and no adverse ACR was ever conveyed to him throughout his service except one ACR (2002-03, average) was conveyed to the workman and the workman has never challenged the same. It is admitted being matter of record that Chandigarh Administration adopted all the service rules including pay rules as were applicable in the State of Punjab by framing rules known as Chandigarh Employees Conditions of Service Rules, 1992 and were made applicable w.e.f. 1991

and that State of Punjab issued instructions dated 25.09.1998 in which it was provided that higher pay scales in the form of ACP scales shall be granted to its employees on completion of 8, 16, 24 & 32 years of service in the same cadre if during this period he has not got any promotion and promotional pay scale during such period. These instructions were further replaced by instructions dated 03.11.2006 in which it was decided to grant these ACP scales on completion of 4, 9 & 14 years of service. It is admitted to the extent that the workman joined in this undertaking since 08.04.1988. So far the benefits of ACP is concerned Punjab Government's letter No.7/60/2006-5PPI/15963 dated 03.11.2006 duly adopted by Chandigarh Administration vide letter No.28/43/95-IH(7)-2006/21532 dated 21.11.2006 wherein the Government of Punjab decided to grant 'Assured Career Progression Scheme' (*here-in-after in short called "ACP scheme"*) on completion of 4, 9 & 14 of service in a cadre w.e.f. 01.11.2006. As provided in para 2 of the notification, this scheme is optional. An existing employee 'including employee less than 4 years of service' will have the option either to continue in the existing ACP scheme after a service of 8, 16, 24 & 32 years or to opt for 4, 9 & 14 years ACP scheme. An employee who wants to opt the scheme will have to exercise an option within two months from the date of issue of this letter along with an undertaking in the enclosed proforma through a sworn affidavit that he wants to accept this scheme effective from 01.11.2006 and will not claim any arrears. Service in a cadre rendered by an employee on the same post before 01.11.2006 shall count for the purpose of grant of benefit under this scheme. The perusal of the record reveals that the workman has submitted his option within the stipulated time period. The workman was involved in numerous inquiries on regular basis due to grave misconduct on his part. Every time the workman was found accountable and punished by the competent authority, hence the workman was habitual offender. The Annual Confidential Reports of the workman were not up to the mark and he was graded as 'Average' about 15 times by the Authority on his performance during the service. The ACP was not granted to the workman not only for the reason that his ACRs are not up to the mark but the major reason is the history currency of punishment awarded to the workman. One ACR (2002-03, Average) was conveyed to the workman and the same was never challenged by the workman. Major punishments which were also imposed on the workman are as below :—

- a) Two increments stopped with cumulative effect vide office order No.1843 dated 24.02.1995.
- b) Two increments stopped with cumulative effect and suspension period limited to the grant of subsistence allowance only vide office order No.561 dated 27.06.2001
- c) One increment stopped with cumulative effect and suspension period limited to the grant of subsistence allowance only vide office order No.322 dated 08.03.2002
- d) Two increments stopped with cumulative effect and suspension period limited to the grant of subsistence allowance only vide office order No.346 dated 17.05.2010.
- e) One increment stopped with cumulative effect vide office order No.2001 dated 09.09.2016.

Chandigarh Administration adopted the letter dated 15.12.2021 issued by the Punjab Government vide letter No.28/43-IH(7)-2022/3781 dated 04.03.2022 wherein the benefit of ACP / DACP scheme stands on hold for the time being to those employees whose ACP / DACP was due on or after 01.07.2021. Result thereof, the workman cannot be granted benefit of ACP till further administrative clarification / order in this respect. On the other hand, name of the workman has been considered for promotion / designation to higher scale and he has recently been designated as Sub-inspector in the pay band / scale of ₹10300-34,800 + 3600 Grade Pay (initial start pay ₹14,430/-). The order in this respect stands issued on 24.02.2023. The name of the workman will be considered for further promotion on higher post on turn-wise / seniority list, as per prevalent rules and fulfillment of all criteria. It is denied to the extent that workman was fully eligible for promotion as per seniority from the date his juniors were promoted because nothing adverse was ever conveyed to him throughout his service. The pay of the workman has been re-fixed by the management after the currency of all punishments awarded from time to time was over. Therefore, the workman is now entitled for the benefit of ACP under the letter dated 03.11.2006 issued by the Punjab Government and duly adopted by the Chandigarh Administration. Further similar stand is taken as taken in the preliminary submissions. Rest of the averments of claim statement are

denied as wrong and prayer is made that the industrial dispute reference as filed by the workman may be dismissed.

5. The workman filed rejoinder wherein the contents of the written statement except admitted facts of the claim statement are denied as wrong and misleading and averments of claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 07.08.2023:—

1. Whether the workman is entitled to ACP Scales, promotion and full pay for the suspension period as prayed for? OPW
2. Whether the workman has concealed the material facts from the court? OPM
3. Whether the present claim statement is pre-mature? OPM
4. Relief.

7. In evidence, workman Nishan Singh - Conductor No.657, CTU, Chandigarh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to 'W12'.

**Exhibit 'W1'** is copy of notification dated 03.11.2006 with regard to ACP Scheme on completion of 4, 9 and 14 years of service in a cadre.

**Exhibit 'W2'** is attested copies of complete service book of workman (Nishan Singh) (consisting page No. 1 to 56 ).

**Exhibit 'W3'** is attested copy of order No.4145 dated 06.07.2011 whereby two increments were stopped without cumulative effect.

**Exhibit 'W4'** is attested copy of order No. 676 dated 21.06.2002 whereby one increment was stopped without cumulative effect.

**Exhibit 'W5'** is attested copy of order No. 234 dated 20.03.2001 whereby two increments were stopped without cumulative effect.

**Exhibit 'W6'** is attested copy of order No.1069 dated 29.11.2000 whereby the services of the workman were censured.

**Exhibit 'W7'** is attested copy of order No. 738 dated 27.08.2001 whereby one increment was stopped without cumulative effect.

**Exhibit 'W8'** is attested copy of order No.540 dated 29.04.2003 whereby two increments were stopped without cumulative effect.

**Exhibit 'W9'** is attested copy of order No. 930 dated 23.07.2003 whereby two increments were stopped without cumulative effect.

**Exhibit 'W10'** is attested copy of order No. 1372 dated 31.10.2003 whereby two increments were stopped without cumulative effect.

**Exhibit 'W11'** is attested copy of order No. 482 dated 25.05.2005 whereby one increment was stopped without cumulative effect.

**Exhibit 'W12'** is attested copy of order No. 706 dated 20.08.2010 whereby one increment was stopped without cumulative effect.

8. On 27.10.2023 workman closed his evidence in affirmative.

9. On the other hand, management examined MW1 Ranbir Singh Gill - Senior Assistant, Office of CTU, Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with attested copies of documents Exhibit 'M1/1' and Exhibit 'MW1/2'.

**Exhibit 'MW1/1'** is order dated 05.08.2022 bearing Endst. No.11219/ECC/G-2/CTU/2022 dated 12.08.2022.

**Exhibit 'MW1/2'** is order dated 22.02.2023 bearing Endst. No. 2433/EAC/HO/CTU/2023 dated 24.02.2023.

10. On 05.01.2024 Learned Law Officer closed oral evidence on behalf of the management. On 05.02.2024 Learned Law Officer closed documentary evidence on behalf of the management.

11. I have heard the arguments of Learned Representative for the workers' union and Learned Law Officer for the management and perused the judicial file. My issue-wise findings are as below:

#### **Issues No. 1 & 2**

12. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

13. Onus to prove issue No.1 is on the workers' union / workman and onus to prove issue No.2 is on the management.

14. In order to prove its claim, workman Nishan Singh examined himself as his own witness and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not produced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W12'.

15. On the other hand, management examined MW1 Ranbir Singh Gill - Senior Assistant, CTU, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written statement which are not reproduced here to avoid repetition. MW1 supported his oral version with documents Exhibit 'MW1/1' and Exhibit 'MW1/2'.

16. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly workman joined his services with CTU on 08.04.1988. Further the facts remained undisputed between the parties that Chandigarh Administration adopted all the service rules including pay rules as were applicable in the State of Punjab by framing rules known as Chandigarh Employees Conditions of Service Rules, 1992 and were made applicable w.e.f. 1991. As per these rules, any amendment made in existing rules or fresh rules framed by State of Punjab shall be automatically extended to employees of Chandigarh Administration. State of Punjab issued instructions dated 25.09.1998 in which it was provided that higher pay scales in the form of ACP scales shall be granted to its employees on completion of 8, 16, 24 and 32 years of service in the same cadre if during this period he has not got any promotion and promotional pay scale during such period. These instructions were further replaced by instructions dated 03.11.2006 in which it was decided to grant these ACP scales on completion of 4, 9 & 14 years of service. Further employees were asked to give their opinions either to adopt new rules or to continue to take benefits under the old scheme. Workman had given option to grant him benefits under instructions dated 03.11.2006. It is also undeniable fact that workman has completed more than 30 years of service as on the date of demand notice raised by the workers' union (the demand notice was received in the office of ALC on 16.08.2021).

17. Learned Representative for the workers' union contended that despite completion of more than 30 years of service he has been denied promotion and ACP scales as per instructions dated 25.09.1998 as well as, as per instructions dated 03.11.2006 from the due date. It is further contended by Learned Representative for the workers' union that ACP scale cannot be denied due to the order of minor punishment. Similarly, the promotion cannot be denied to the workman on the basis of adverse ACRs, if the same are not conveyed to him. It is further contended by Learned Representative for the workers' union that the workman was fully eligible for promotion on the date when juniors were promoted. The workman was senior and no adverse ACRs except for the period 2002-03 were conveyed to the workman, therefore, all ACRs of the workman are deemed to be good. To support his contentions, Learned Representative for the workers' union referred cross-examination of MW1 wherein he has admitted that conductors are entitled to promotion as per seniority. There is no order of punishment against the workman whereby promotion to workman was denied. No penalty of withholding of promotion had been awarded to the workman therefore promotion cannot be denied to him. Moreover, when the departmental inquiry culmi-

nated in passing of minor punishment in that case the promotion cannot be denied. Furthermore, when the promotion is as per seniority, the senior cannot be denied promotion unless he is found un-fit for promotion. In the present case, the workman was never found unfit for promotion. To support his contention Learned Representative for the workers' union referred the judgment reported in **2012(4) SCT 153 titled as Omi Devi Versus Uttar Haryana Bijli Vitran Nigam Limited, Shakti Bhawan, Sector 6, Panchkula through its Managing Director & Others (P&H)**, wherein it has been held that if there are no particular rules relating to service that deny promotion on account of punishment suffered by employee during tenure of service, there is also no scope to deny consideration for ACP scales.

18. Learned Representative for the workers' union referred judgment reported in **2017(3) SCT 721 titled as Ram Chander Versus Haryana Agro Industries Corporation Limited & Another (P&H)** wherein it has been held in para 12 as below:-

*"12. The conditions for grant of ACPs nowhere state that imposition of punishment would be a ground to deny the benefit of ACP. The petitioner was facing a charge sheet in the year 2007 and finally he was exonerated. The petitioner was facing a charge-sheet in the year 2009, in which, finally he was exonerated, vide order dated 28.03.2013 (Annexure P-4). The minor punishment of recovery of ₹ 1,09,410/- has been imposed, vide order dated 17.04.2008 (Annexure P-2) on account of show-cause notice dated 06.12.2007. As per the said order, the recovery is a minor punishment and cannot be made a ground not to consider the case for grant of 3rd ACP. An employee on account of above-said punishment cannot be ignored for promotion and this Court in Omi Devi's (supra) whereby the petitioner, who had been imposed a punishment for withdrawal of two increments without cumulative effect was not being considered for grant of 1st ACP after completing 10 years of regular satisfactory. In this case, it is further observed that on account of an audit objection, the DCRG of an employee could not be withheld. The writ petition was allowed on both the above-said points with cost as assessed ₹ 10,000/- and direction to the respondents to make payment of DCRG and consider the case for grant of ACP."*

19. Learned Representative for the workers' union referred to judgment reported in **2020(1) SCT 816 titled as Satinder Singh Versus State of Punjab & Others (P&H)** wherein para 7 it has been held as below :-

*"7. It is, thus, clear that non-conveying of the ACRs to the official at appropriate stage and subsequent reading the same against them is a conduct violative of the principles of natural justice. Similarly, the conduct of the respondents in the instant case in denying the benefit of promotion on the strength of an adverse ACR which was never conveyed to the petitioner does not withstand the test of judicial scrutiny."*

20. Learned Representative for the workers' union referred judgment reported in **1996(1) SCT 412 (P&H) titled as S. S. Rana Versus State of Haryana & Others** wherein it has been held as as below :-

*"The petitioner had admittedly got 70% Good reports. On the basis of his record, he was not ineligible for promotion. No penalty of withholding of promotion had been awarded to him. Consequently, the petitioner was wrongly considered as ineligible. Similarly, even in October 1992, the petitioner had been denied promotion on the same basis. Even this action suffer from same infirmity."*

21. Learned Representative for the workers' union referred judgment reported in **2016(2) SCT 746 titled as Pawan Kumar Versus State of Haryana & Others** wherein para 7 it has been held as below :-

*"7. Since penalty of punishment imposed upon the petitioner was not major (it was a minor), order dated 02.07.2012 (Annexure P/7) is set aside and the petitioner is directed to be promoted notionally w.e.f. 18.08.2006 and a direction is also being given to the respondents to fix his notional pay w.e.f. 18.08.2006 for all intents and purpose within a period of three months."*

22. Learned Representative for the workers' union has referred judgment reported in **1995(3) SCT 50** titled as **Shri Vidya Ram Versus State of Haryana**. Para 5 & 6 of the judgment is reproduced as below:-

*"5. The expression 'seniority-cum-fitness' means that a person who is senior should ordinarily be promoted despite better merit of a junior. The element of competitive consideration or simultaneous consideration of the candidature of all eligible persons is absent when promotion is made on the basis of seniority-cum-fitness. A senior person can be ignored only if he is found unfit. In State of Kerala and another v. N.M. Thomas and others, AIR 1976 Supreme Court 490, the Supreme Court observed as under:-*

*"The principle of equality is application to employment at all stages and in all respects namely, initial recruitment promotion, retirement, payment of pension and gratuity. With regard to promotion the normal principles are either merit-cum-seniority or seniority-cum-merit. Seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority. This will not violate Article 14, 16(1) and 16(2). A rule which provides that given the necessary requisite merit, a member of the backward class shall get priority to ensure adequate representation will not similarly violate Article 14 or Article 16(1) and (2). The relevant touchstone of validity is to find out whether the rule of preference secures adequate representation for the unrepresented backward community or goes beyond it."*

*6. In N. Srinath, M.A. Somashekar, Assistant Director, Industries v. The State of Mysore and others, 1972 S.L.R. 449, a Division Bench of Mysore High Court has held that when criteria for promotion is seniority-cum-merit the seniormost employee should be considered for promotion and if he is otherwise found fit he should be promoted, and only in case of unfitness/unsuitability his junior can be considered for promotion."*

23. It is further contended by Learned Representative for the workers' union that no ACR was ever conveyed to the workman except ACR for the year 2002-03, therefore, as per law all the ACRs are to be considered as 'Good'. Even otherwise, for the grant of ACP scale 50% ACRs have to be good and the workman fulfils the criteria. The workman was not under major punishment on 09.03.2003 to 16.05.2010, 18.05.2012 to 08.09.2016 and 10.09.2017 till date. The workman become eligible for ACP scale as per the instructions dated 03.11.2006 on completion of 4, 9 & 14 years of service. The workman become entitled to ACP scale on completion of 4, 9 & 14 years of service much before the issuance of instructions dated 15.12.2021, therefore ACP cannot be denied to the workman.

24. On the other hand, Learned Law Officer contended that the workman is a habitual offender and has been awarded various punishments in frauds committed by him at various occasions. The ACP scales and promotion have been denied to the workman due to currency of punishment and unsatisfactory service record. It is further contended by Learned Law Officer that the history sheet of the workman is detailed in para 1 of preliminary submissions in the written statement and para 1 of affidavit Exhibit 'MW1/A' tendered by MW1. The perusal of service record of the workman would reveal that he submitted his option within the stipulated time period but the workman was involved in numerous inquiries on regular basis due to grave misconduct on his part. Every time workman was found accountable and punished by the competent authority. The ACRs of the workman were not up to the mark. He was graded as average 15 times by the authority, on his performance during the service. The ACP was not granted to the workman not only for the reasons that his ACRs were not up to the mark but the major reason was the history of currency of punishment awarded to the workman. One ACR 2002-03 graded as Average was conveyed to the workman and the same was never challenged by him. The workman apart from various minor punishment, was also imposed various major punishments i.e.

- a) Two increments stopped with cumulative effect vide office order No.1843 dated 24.02.1995.
- b) Two increments stopped with cumulative effect and suspension period limited to the grant of subsistence allowance only vide office order No.561 dated 27.06.2001

- c) One increment stopped with cumulative effect and suspension period limited to the grant of subsistence allowance only vide office order No.322 dated 08.03.2002
- d) Two increments stopped with cumulative effect and suspension period limited to the grant of subsistence allowance only vide office order No.346 dated 17.05.2010.
- e) One increment stopped with cumulative effect vide office order No.2001 dated 09.09.2016

25. It is further contended by Learned Law Officer that vide order issued on 12.08.2022 / Exhibit 'MW1/1' the pay of workman has been re-fixed after the currency of punishments awarded from time to time including the suspension period was over. Therefore, the workman is now entitled for the benefit of Assured Career Progression under letter dated 03.11.2006 issued by the Punjab Government duly adopted by Chandigarh Administration vide letter No.28/43/95-IH(7)-2006/21532 dated 21.12.2006. Moreover, as per the notification of the Government of Punjab, Department of Finance (Finance, Personnel - I Branch) issued vide No.FD-FP-10ACP(DACP)/050/2021-5FP1 dated 15.12.2021 duly adopted by Chandigarh Administration, Department of Personnel vide No.28/43-IH(7)-2022/3781 dated 04.03.2022, ACP / DACP will not be granted after 01.07.2021 to the officials.

26. To my opinion, the entitlement of an employee for the grant of ACP is governed according to the procedure incorporated in letter dated 03.11.2006 issued by Government of Punjab / Exhibit 'W1' which is adopted by the Chandigarh Administration. Para 4(b) of Exhibit 'W1' is reproduced as below:-

*"(b) The procedure for assessing the work and conduct for placement in the higher scale shall be the same as applicable to the case of promotion. The placement in higher scale shall be allowed only to these employees whose overall service record during the span of satisfactory service, is adjudged as 'Good' and the employee is otherwise suitable for promotion. "Good" record shall mean that more than 50% Annual Confidential Reports are good and out of last three years reports at least two should be 'Good'. For all the remaining years the benchmark may be 'Average'."*

27. In the present case, it is admitted by the management that no adverse ACR except for the year 2002-03 graded as 'Average' was conveyed to the workman. In this regard, the management in para 5 on merits, of written reply to claim statement and in para 6 of affidavit Exhibit 'MW1/A' mentioned that one ACR (2002-03, Average) was conveyed to the workman and this fact is not disputed by the workman. The management in the written reply as well as during testimony of MW1 pleaded that the workman was graded as 'Average' about 15 times by the authority, on his performance during service. There is no evidence of management proving that the adverse ACRs except ACR for the period 2002-03 were ever conveyed to the workman enabling him to make representation against the said ACRs. In para 2 of affidavit Exhibit 'MW1/A' the details of the ACRs for the period from year 1988-89 to year 2021-22 are given. As per para 2 of affidavit Exhibit 'MW1/A' the ACR for the period of 1989-90, 1991-92, 1993-94, 1994-95, 1995-96, 1996-97, 1997-98, 1999-2000, 2002-03, 2006-07, 2007-08, 2008-09, 2011-12, 2015-16 are graded as 'Average' and ACR for the period 1992-93 is graded as 'Below Average'. The aforesaid adverse entries of ACRs except 2002-03 are not conveyed to the workman. In this regard, MW1 in his cross-examination admitted as correct that adverse ACRs as mentioned in para 2 of affidavit Exhibit 'MW1/A' were never conveyed to the workman. MW1 admitted as correct that ACP scales on completion of 4, 9, 14 years of service were not granted to the workman. MW1 voluntarily stated due to currency of punishment. MW1 denied the suggestion as wrong that for the grant of ACP scale only ACR record is to be considered. The suggestion put by the workers' union to MW1 that for the grant of ACP scale only ACR record is to be considered stands proved from para 4(b) of the letter dated 03.11.2006 / Exhibit 'W1'. So far entitlement of the workman to the ACP scales on completion of 4, 9, 14 years of service is concerned, as per the judgments referred by Learned Representative for the workers' union

reported in **2012(4) SCT 153, 2017(3) SCT 721 and 2020(1) SCT 816 (supra)** are applicable to the facts of the present case to an extent. Accotrially, the adverse ACRs which are not conveyed to the workman are deemed to be 'Good' and consequently the workman is entitled to the ACP scales on the completion of 4, 9 & 14 years of service. The effect of the notification of Government of Punjab, Department of Finance (Finance Personnel - I Branch) issued on 15.12.2021 adopted by Chandigarh Administration on 04.03.2022 is prospective and not retrospective.

28. As far as the promotion sought by the workman from the date when his juniors were promoted, is concerned apart from fulfilling the criteria of seniority, the workman must be fit for promotion. The workman has failed to controvert the fact that he was awarded major punishment vide office order No.49 dated 25.01.1993, office order No.158 dated 16.03.1995, office order No.400 dated 05.07.1995, office order No.650 dated 13.12.1996. Office order No.187 dated 09.09.2008, office order No.201 dated 09.09.2016. The plea taken by the management that even if the various minor punishments awarded to the workman fully detailed in para 1 of preliminary submissions in the written statement and in para 1 of affidavit of MW1 are ignored, then also the workman was awarded various major punishments due to which he was not found fit for promotion, is justified. The plea of the workman that on the date when his juniors were promoted, there was no major penalty against him, does not stand proved because the workman has not mentioned the specific date when his juniors were promoted by superseding the workman.

29. MW1 in para 1 of his affidavit Exhibit 'MW1/A' has given the history sheet of the punishments in respect of workman Nishan Singh - C.NO.657. MW1 in his cross-examination admitted as correct that punishments as mentioned in para 1 of affidavit Exhibit 'MW1/A' at serial No.1, 4 and 10 to 18 are minor punishments. The perusal of para 1 of affidavit Exhibit 'MW1/A' would reveal that the major punishment was awarded to workman vide order dated 24.02.1995 (Sr. No.2 of para 1), order dated 27.06.2001 (serial No.8 of para 1), order dated 17.05.2010 (serial No.19 of para 1), 09.09.2016 (serial no.20 of para 1). MW1 in his cross-examination stated that the impact of major punishment vide order dated 24.02.1995 was over on 24.02.1997. The impact of major punishment vide order dated 27.06.2021 was over on 27.06.2003. The impact of major punishment vide order dated 17.05.2010 was over on 17.05.2012. The impact of major punishment vide order dated 09.09.2016 was over on 09.09.2017. As per the history sheet detailed in para 1 of affidavit Exhibit 'MW1/A', vide order dated 06.01.1993 (serial No.3 of para 1) the workman was awarded punishment 'treated as leave without pay' for absent period 30.05.1992 to 14.06.1992; vide order dated 08.03.2002 (serial No.5 of para 1), the workman was awarded punishment 'one increment stopped with cumulative effect and under suspension period be limited to the grant of subsistence allowance only'; vide order dated 13.09.1995 (Serial No.6 of para 1) the workman was awarded punishment 'treated as without pay leave' for absent period w.e.f. 28.07.1995 to 03.08.1995; vide order dated 27.09.1995 (serial No.7 of para 1) the workman was awarded punishment 'treated as without pay leave' for absent period w.e.f. 29.08.1995 to 21.09.1995; vide order dated 18.09.1997 (serial No.9 of para 1) the workman was awarded punishment 'treated as without pay leave' for absent period w.e.f. 15.08.1997 to 04.09.1997. MW1 admitted as correct that stoppage of increments without cumulative effect are restored after the period along with regular increment on the expiry of period of punishment. In view of the aforesaid discussion, it is duly proved on record that punishments mentioned at serial No.1, 3, 4, 6, 7, 9 to 18 in para 1 of affidavit Exhibit 'MW1/A' are minor and the impact of the major penalties mentioned at serial No.2, 5, 8, 19 & 20 in para 1 of affidavit Exhibit 'MW1/A' is already over. MW1 in his cross-examination stated that ACP scales are given under the authority of Director, Chandigarh Transport Undertaking. There is no written order of the Director Transport denying ACP scales to the workman. The promotion was denied on the basis of Departmental Promotion Committee. MW1 voluntarily stated that the workman was promoted as Sub-Inspector w.e.f. 01.01.2023 vide order dated 24.02.2023. Except the DPC proceedings, there is no separate order of denial of promotion to the workman prior to order dated 24.02.2023. MW1 in his cross-examination further stated that there is no order of punishment during service tenure of the workman whereby it is ordered that the workman is not entitled for promotion. The law laid down in the judgments referred by Learned

Representative for the workers' union reported 1996(1) SCT 412 (P&H), 2016(2) SCT 746 and 1995(3) SCT 50 (*supra*) is well recognised by this Court but the ratio of rulings is not applicable to the facts of the present case because in the present case promotion is not denied to the workman only on the basis of adverse ACRs but also on account of currency of major punishments awarded to him due to which he was found unfit for promotion.

30. It is contended by Learned Representative for the workers' union that when the departmental inquiries culminate in passing of order of minor punishment, pay of suspension period cannot be denied. Therefore, the suspension period have to be treated as duty period for all intents & purposes. To my opinion, the aforesaid contention raised by Learned Representative for the workers' union is devoid of merits because the punishment orders whereby while passing the minor penalty, the suspension period is limited to the grant of subsistence allowance only, are not assailed at.

31. In the light of discussion made above, the workman is entitled to the ACP scales on completion of 4, 9 & 14 years of service. The relief of notional promotion and pay of suspension period is declined.

32. Learned Law Officer for the management argued that the workman has concealed the material facts regarding history sheet of the punishments awarded to him by the department in pursuance of the disciplinary proceedings. The aforesaid argument advanced by Learned Law Officer is devoid of merits because the workman has not challenged any punishment order.

33. Accordingly, issue No.1 is partly decided in favour of the workman / workers' union and partly against the management and issue No.2 is decided against the management and in favour of workman / workers' union.

**Issue No. 3:**

34. Onus to prove this issue is on the management.

35. During course of arguments this issue has not been pressed by Learned Law Officer.

36. Accordingly, this issue is decided against the management and in favour of the workers' union.

**Relief :**

37. In the view of foregoing finding on the issues above, this industrial dispute is partly allowed to the extent that the workman held entitled to the ACP scales on completion of 4, 9 & 14 years of service. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 05.02.2024.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT**Notification**

The 18th March, 2024

**No. 13/1/9776-HII(2)-2024/4451.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **57/2021** dated **01.01.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

PRESIDENT/GENERAL SECRETARY, ALL HARYANA ROADWAYS WORKERS UNION,  
HARYANA ROADWAYS, CHANDIGARH .(Workers' Union)

AND

1. THE DIRECTOR STATE TRANSPORT, HARYANA ROADWAYS, SECTOR 17, CHANDIGARH
2. THE GENERAL MANAGER HARYANA ROADWAYS, SECTOR 17, CHANDIGARH (Management)

**AWARD**

1. Vide Endorsement No.13/1/9776-HII(2)-2021/4849 Dated 03.05.2021 the Secretary Labour, Chandigarh Administration has referred the dispute to this Court / Tribunal on the demand notice dated 16.12.2020 in respect of Dinesh Kumar - Conductor No.380, Haryana Roadways, Chandigarh (*hereinafter in referred "workman"*) raised by the President / General Secretary, All Haryana Roadways Workers' Union, Haryana Roadways, Chandigarh (*hereinafter referred "workers' union"*) upon The Director State Transport, Haryana & Another (*hereinafter in referred "management"*) under Section 2(k) of the Industrial Disputes Act, 1947 (*hereinafter in short referred "ID Act"*) in following words :-

"Whether the demand raised in the demand notice dated 16.12.2020 by President/General Secretary, All Haryana Roadways Workers' Union, Haryana Roadways, Chandigarh AND The Managements (1) The Director State Transport, Haryana Roadways, Sector 17, Chandigarh (2) The General Manager, Haryana Roadways, Sector 17, Chandigarh are genuine and justified. If so, to what effect and to what relief the Union/Workers are entitled to, if any ?"

2. Upon notice, the workers' union appeared through its representative Shri Naresh Chander, who on 02.08.2021 made the statement that the demand notice dated 16.12.2020 may be treated as statement of claim.

3. Briefly stated the averments of demand notice-cum-claim statement are that a meeting of the workers' union was held on (dated Nil) and it was unanimously resolved that injustice has been done with the workman at the hands of the management. Management has passed illegal order dated 17.06.2015 whereby two annual increments of workman were stopped without cumulative effect and further it was observed that workman shall not be paid his salary for the period of suspension beyond subsistence allowance. The workman preferred an appeal against order dated 17.06.2015 but the said appeal was dismissed vide order dated 10.08.2016, therefore, workers' union has decided to fight for justice on his behalf by raising demand notice and to file the case on behalf of the workman before the Assistant Labour Commissioner (ALC), U.T. Chandigarh and then before Labour Court, U.T. Chandigarh. Further workers' union has authorised President and Secretary of the workers' union to pursue the case on behalf of the workers' union and to sign necessary pleadings in respect of the same and to take the services of authorised representative to represent the workers' union before ALC as well as before Labour Court, U.T. Chandigarh.

4. It is further averred that workman was illegally put under suspension on 12.01.2015 and thereafter charge-sheeted as per charge-sheet dated 22.01.2015 on the allegations that on 29.12.2014 while performing his duties on Chandigarh-Jaipur route, workman embezzled a sum of ₹ 234/-. Workman duly

replied to the charge-sheet but without appreciating the reply of workman, Inquiry Officer was appointed. The Inquiry Officer did not conduct the inquiry in a fair and proper manner. No Presenting Officer associated in the inquiry proceedings and Inquiry Officer acted as judge as well as Prosecutor. Workman was not made aware of his right to take assistance of co-worker therefore, workman could not defend his case properly. Workman was not given adequate opportunity to defend his case and to lead his defence. Without appreciating the evidence on record, Inquiry Officer submitted his report against the workman. Punishing authority did not supply copy of inquiry report before imposing the punishment which was mandatory and thereby workman was deprived of his rights of making representation against the findings of Inquiry Officer. Punishing authority passed punishment order dated 17.06.2015 whereby two increments of workman were stopped without cumulative effect and further it was ordered that workman shall not be paid his salary for the period of suspension beyond subsistence allowance. Delay of pay of suspension period is illegal and against settled law. It has been held by our own Hon'ble High Court that when only minor punishment is imposed then pay of suspension period cannot be denied, because that shall have harsh consequences than to the substantive punishment imposed on delinquent. Workman filed an appeal against order of punishment dated 17.06.2015 but appellate authority without approaching the material of record and ground of appeal dismissed the appeal vide order dated 10.08.2016. The order of punishment dated 17.06.2015 and order of appellate authority dated 10.08.2016 are illegal and against law. Workman had requested the management to withdraw the illegal orders but all in vain. Hence, this demand notice. By way of demand notice management is called to withdraw the illegal orders of punishment dated 17.06.2015 and order of appellate authority dated 10.08.2016 being illegal and against law. Prayer is made that management may be called upon to withdraw the illegal orders of punishment dated 17.06.2015 and order of appellate authority dated 10.08.2016 and to release all the monetary benefits to the workman along with interest @ 12% p.a. within a period of 15 days from the receipt of demand notice.

5. On notice, the management No.1 & 2 contested the demand notice-cum-claim statement by filing written statement on 07.09.2022, wherein preliminary objections are raised on the ground that the application is not maintainable as there is no limitation alive at this stage to file and maintain the present application. The present application is hopelessly time barred. The punishment was awarded to the workman / conductor in the year 2015 and he has filed this application in the year 2021 after a gap of 6 years. Hon'ble Supreme Court in ***Rup Diamonds Versus Union of India 1989(2) SCC 267*** and ***Government of West Bengal Versus Tarun K. Roy reported in 2004(1) SCC 347*** has held that persons who approached the court at a belated stage placing reliance upon order passed in some other cases earlier can be denied the discretionary relief on account of delay and laches. Similar view is taken in ***A.P. Steel Re-rolling Mill Ltd. Versus State of Kerala and Others reported in 2007(2) SCC 725***, ***U.P. Jal Nigam and Another Versus Jaswant Singh and Another reported in 2006(11) SCC 464*** and ***State of Uttaranchal and Another. Versus Shiv Charan Singh Bhandari and Others Reported in 2013(6) SLR 629***. Further objection is raised on the ground that applicant has no locus-standi and cause of action. The court has no jurisdiction to entertain the present application and the applicant has not deposited the proper court fee.

6. Further preliminary submissions are made that workman Shri Dinesh Kumar, C.No.207/380 was performing his duty on 29.12.2014 at vehicle / Bus No.4138 on route Chandigarh to Jaipur and the bus was checked by the checking staff at Lalru (Punjab). During checking, it was found that workman / conductor has issued one ticket of ₹ 200/- only from Derabassi to Delhi to two passengers and got from them ₹ 434/-. After receiving the report of fraud of ₹ 234/- from checking staff, the workman was suspended vide order No.100/ECC dated 12.01.2015 and a charge-sheet levelling the charge of fraud of ₹ 234/- was issued to the workman / Conductor to which workman submitted reply and the same was found unsatisfactory. Thereafter, the Traffic Manager, Kalka was appointed as Inquiry Officer vide office order No.267/ECC dated 30.01.2015. The services of the employee were reinstated on 12.03.2015 subject to the final outcome of the departmental inquiry. The Inquiry Officer has conducted the inquiry as per Rules and found that the employee is guilty of the charges levelled against him in the charge-sheet. Agreeing with the inquiry report, a show-cause notice vide Memo No.9675/ECC dated 14.05.2015 for terminating the service contract was issued to the workman/conductor. The workman submitted reply to show-cause notice which was found not satisfactory. Thereafter, an opportunity of personal hearing was also given to the workman/conductor. However, no solid proof of his innocence has been proved by the workman / conductor. A lenient view is adopted by the

competent authority and a punishment of stoppage of two annual increments without cumulative effect and no benefit during the suspension period w.e.f. 12.01.2015 to 11.03.2015 has been granted to the workman / conductor. Thereafter, the workman/conductor filed an appeal before the Higher Authority i.e. Director General, State Transport Haryana against the punishment order dated 17.06.2015 and same was rejected by the appellate authority being found without any merit vide Endst. No.2/21-2016/A4/E3 dated 10.08.2016.

7. Further on merits, the fact that all Haryana Roadways Workers Union unanimously resolved to challenge the punishment order dated 17.06.2015 and order of appeal dated 10.08.2016 and authorised its President and Secretary to pursue the case on behalf of the workers' union before the ALC, U.T. Chandigarh and Labour Court, U.T. Chandigarh, is replied being matter of record. The Inquiry Officer had conducted the inquiry as per due process of law and according to the principle of natural justice and submitted his report accordingly. The copy of inquiry report was issued with show-cause notice vide memo No.9675/ECD dated 14.05.2015 and the workman had received the same and submitted the reply of show-cause notice which was found unsatisfactory. The workman / conductor was granted another opportunity by way of personal hearing. The workman / conductor has not produced any solid proof during personal hearing which could prove his innocence. Further, similar stand is taken as taken in the preliminary submissions. Rest of the averments of demand notice-cum-claim statement are denied as wrong and prayer is made that application may be dismissed.

8. Replication was not filed. From the pleadings of parties, following issues were framed vide order dated 12.10.2022

1. Whether the demands raised in the demand notice dated 03.05.2021 by the President / General Secretary, workers' union are genuine and justified ? If so, to what effect and to what relief the Workers' Union/Workman is entitled to, if any ? OPW
2. Whether the claimant-workman has no locus-standi ? OPM
3. Whether this Industrial Tribunal/Court has no jurisdiction ? OPM
4. Whether the present Industrial Dispute is barred by limitation ? OPM
5. Relief.

9. In evidence, workman Dinesh Kumar (Conductor No. 380 of Haryana Roadways) examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to Exhibit 'W5'.

**Exhibit 'W1'** is copy of charge sheet dated 22.01.2015.

**Exhibit 'W2'** is copy of reply dated 23.01.2015 to the charge sheet.

**Exhibit 'W3'** is copy of punishment order dated 17.06.2015 passed by the General Manager, Haryana Roadways, Chandigarh.

**Exhibit 'W4'** is copy of appeal submitted vide diary No.5270 dated 14.12.2015 against the punishment order dated 17.06.2015.

**Exhibit 'W5'** is copy of order dated 10.08.2016 passed by the appellate authority i.e. Joint Transport Commissioner.

10. On 26.05.2023 workman closed his evidence in affirmative.

11. On the other hand, management examined MW1 Sanjay Kumar, Clerk, office of General Manager, Haryana Roadways, Chandigarh who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'M1' to Exhibit 'M9' (original of Exhibit 'M1' to Exhibit 'M8' were produced at the time of recording evidence, which were seen and returned).

**Exhibit 'M1'** is report dated 29.12.2014.

**Exhibit 'M2'** is suspension order dated 12.01.2015.

**Exhibit 'M3'** is charge sheet dated 22.01.2015 issued by General Manager, Chandigarh against workman Dinesh Kumar.

**Exhibit 'M4'** is order dated 30.01.2015 regarding appointment of inquiry officer.

**Exhibit 'M5'** is inquiry report dated Nil.

**Exhibit 'M6'** is show cause notice dated 14.05.2015.

**Exhibit 'M7'** is punishment order dated 17.06.2015.

**Exhibit 'M8'** is order dated 12.09.2023 passed by appellate authority vide

**Exhibit 'M9'** is authority letter dated 03.11.2023 in favour of Sanjay Kumar.

12. On 01.12.2023, Shri Sanjay Kumar, Clerk office of General Manager, Haryana Roadways, Chandigarh along with Learned Government Pleader for the management closed oral evidence. On 01.01.2024, Shri Sanjay Kumar, Clerk office of General Manager, Haryana Roadways, Chandigarh along with Learned Government Pleader for the management closed documentary evidence.

13. I have heard arguments of Learned Representative for the workers' union and Learned Government Pleader for the managements and perused the judicial file. My issue-wise findings are as below :-

**Issue No. 1 :**

14. Onus to prove this issue is on the workman.

15. Under this issue workman Dinesh Kumar working as Conductor No.380 office of General Manager, Haryana Roadways examined himself as his own witness as AW1 and vide his affidavit Exhibit 'AW1/A' deposed that he was illegally put under suspension on 12.01.2015 and thereafter, he was charge-sheeted as per charge-sheet dated 22.01.2015 on the allegations that on 29.12.2014 while performing his duties on Chandigarh-Jaipur route, he embezzled a sum of ₹234/-. He duly replied to the charge-sheet but without appreciating his reply, Inquiry Officer was appointed. Copy of charge-sheet dated 22.01.2015 and reply to charge-sheet are Exhibit 'W1' and Exhibit 'W2'. The Inquiry Officer did not conduct the inquiry in a fair and proper manner. No Presenting Officer associated in the inquiry proceedings and Inquiry Officer acted as Judge as well as Prosecutor. He was not made aware of his right to take assistance of co-worker, therefore, he could not defend his case properly. He was not given adequate opportunity to defend his case and to lead his defence. Without appreciating the evidence on record, Inquiry Officer submitted his report against him. The Punishing authority did not supply copy of inquiry report before imposing the punishment which was mandatory and thereby he was deprived of his rights of making representation against the findings of Inquiry Officer. Punishing authority passed punishment order dated 17.06.2015 whereby his two increments were stopped without cumulative effect and further it was ordered that he shall not be paid his salary for the period of suspension beyond subsistence allowance. Delay of pay of suspension period is illegal. When only minor punishment is imposed, then pay of suspension period cannot be denied, because that shall have harsh consequences than to the substantive punishment imposed on delinquent. Copy of punishment order dated 17.06.2015 is Exhibit 'W3'. He filed an appeal against order of punishment dated 17.06.2015 but appellate authority without approaching the material of record and ground of appeal dismissed the appeal vide order dated 10.08.2016. Copy of Appeal and the order passed by the appellate authority are Exhibit 'W4' and Exhibit 'W5'. The order of punishment dated 17.06.2015 and order of appellate authority dated 10.08.2016 are illegal and against law. He had requested the management to withdraw the illegal orders, hence, this demand notice.

16. On the other hand, Learned Government Pleader referred statement of MW1 Sanjay Kumar, Clerk O/o General Manager, Haryana Roadways, Chandigarh; who vide his affidavit Exhibit MW-1/A deposed that workman Shri Dinesh Kumar, C. No.207/380 was performing his duty on 29.12.2014 at vehicle / Bus No. 4138 on Route Chandigarh to Jaipur and the bus was checked by the checking staff at Lalru (Punjab). During checking it was found that workman / conductor has issued one ticket of ₹ 200/- only from Derabassi to Delhi to two passengers and got from them ₹434/-. Copy of report is Exhibit 'M1'. After receiving the report of fraud of ₹ 234/- from checking staff, the workman was suspended vide order No.100/ECC dated 12.01.2015. The copy of order dated 12.01.2015 is Exhibit 'M2'. A charge-sheet levelling the charge of fraud of ₹ 234/- was issued to the workman/Conductor. Copy of charge-sheet is Exhibit 'M3'. The workman submitted reply to charge-sheet which was found unsatisfactory. Thereafter, the traffic Manager, Kalka was appointed as Inquiry

Officer vide office order No. 267/ECC dated 30.01.2015. The copy of order dated 30.01.2015 is Exhibit 'M4'. The services of the employee were reinstated on 12.03.2015 subject to the final outcome of the departmental inquiry. The Inquiry Officer has conducted the inquiry as per Rules and found that the employee is guilty of the charges levelled against him in the charge-sheet. The copy of inquiry report is Exhibit 'M5'. Agreeing with the inquiry report, a show-cause notice vide Memo No. 9675/ECC dated 14.05.2015 for terminating the service contract was issued to the workman/conductor. The copy of show-cause notice is Exhibit 'M6'. The workman submitted reply to show-cause notice which was found not satisfactory. Thereafter, an opportunity of personal hearing was also given to the workman/conductor. However, no solid proof of his innocence has been proved by the workman/conductor. A lenient view is adopted by the competent authority and a punishment of stoppage of two annual increments without cumulative effect and no benefit during the suspension period w.e.f. 12.01.2015 to 11.03.2015 has been granted to the workman/conductor. The copy of punishment order dated 15.06.2015 is Exhibit 'M7'. Thereafter, the workman/conductor filed an appeal before the Higher Authority i.e. Director General, State Transport Haryana against the punishment order dated 17.06.2015 and same was rejected by the appellate authority being found without any merit vide Endst. No. 2/21-2016/A4/E3 dated 10.08.2016. MW1 also brought into evidence copy of order dated 12.09.2023 passed by the Appellate Authority vide Exhibit 'M8' and authority letter dated 03.11.2023 in his favour vide Exhibit 'M9'.

17. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly workman Dinesh Kumar was employed as Conductor No.207/380 with Haryana Roadways, Chandigarh. Further, there is no dispute with regard to the fact that on 29.12.2014, workman Dinesh Kumar was performing his duty as a Conductor on Vehicle/bus of Haryana Roadways bearing registration No.4138 on route Chandigarh to Jaipur. Further, there is no dispute between the parties with regard to the fact that on 29.12.2014, the bus No. 4138 was checked by the checking staff at Lalru (Punjab). The checking staff alleged that during checking it was found that Dinesh Kumar, Conductor has issued one ticket of ₹ 200/- only to two passengers from Derabassi to Delhi and got ₹ 434/- from the said passengers and thereby the conductor has embezzled the amount of ₹ 234/- belonging to the Government. On the other hand, workman Dinesh Kumar, Conductor has denied the aforesaid allegation and has taken the plea that on checking, two passengers were found travelling in the bus while standing and one ticket of ₹ 200/- was recovered from them for travelling from Derabassi to Delhi. On asking of checking staff, the said passengers informed that they had given ₹ 500/- and demanded two tickets and further informed that the conductor had returned ₹300/- to them by issuing one ticket. The workman further pleaded that due to heavy rush, he could not issue tickets to all the passengers. The passengers in order to save themselves gave false information to the checking staff by saying that they have demanded two tickets. In case, they had demanded two tickets then why he would return ₹300/- to them. The workman further pleaded that it is also falsely alleged that the said passengers boarded the bus from Chandigarh. In-fact, the said passengers boarded the bus from Derabassi and were standing in the bus.

18. On the basis of the written report dated 29.12.2014 of the checking staff / Exhibit 'M1', vide order No.100/ECC dated 12.01.2015/ Exhibit 'M2' issued by General Manager, Haryana Roadways, Chandigarh, the service contract of Dinesh Kumar, C-SPL No.207/380 was suspended with immediate effect and disciplinary proceedings were initiated against Dinesh Kumar, Conductor by issuing charge-sheet dated 22.01.2015 / Exhibit 'M3' / Exhibit 'W1', to which Dinesh Kumar, Conductor admittedly filed reply Exhibit 'W2'. In this regard, AW1 Dinesh Kumar in his cross-examination admitted as correct that he was suspended vide order dated 12.01.2015. AW1 admitted as correct that thereafter he was charge-sheeted and copy of charge-sheet was supplied to him. AW1 further stated that he had filed reply to the charge-sheet. Learned Representative for the workers' union argued that charge-sheet served to the workman is defective as it does not contain statement of imputation, list of witnesses and list of documents. Besides, the copy of relied upon documents is not supplied to the workman which deprived the workman to prepare proper defence and caused serious prejudice to the workman. To support his argument Learned Representative for the workers' union referred the case law reported in **1992 (1) SCT 258 P&H** titled as **Hans Raj Gupta Versus State of Punjab** and **2017(3) CLR 753 P&H** titled as **Dayalbagh Spinning and Weaving Mills Versus The Govt. of Punjab & Others**. On the other hand, it is argued by Learned Government Pleader for the management that the contents of the charge-sheet / Exhibit M3' contains the complete particulars of the allegations and except the

report of the checking staff / Exhibit 'M1', no other document is relied upon in the inquiry proceedings. Besides, during the inquiry proceedings the workman was provided with an opportunity to cross-examine the witnesses examined by the Inquiry Officer and was also provided with an opportunity to lead his defence evidence. From reply / Exhibit 'W2' filed by the workman to the charge-sheet / Exhibit 'W1' / 'M3', it is made out that the workman has offered his explanation for each and every allegation levelled in the report of the checking staff which goes to prove that the workman was supplied with the copy of the report of the checking staff, otherwise the workman would not have been able to comment upon the same. To my opinion, the arguments advanced by Learned Government Pleader for the management carries force. In the present case, on moving of application by the workman, the management tendered on record attested copy of inquiry file consisting of page No.1 to page No.166 and supplied copy of the same to Learned Representative for the workers union. The proceedings recorded during inquiry would reveal that the department has examined 3 witnesses in inquiry i.e. Hardayal Singh, Inspector (department witness No.1), Bahadur Singh, Sub-Inspector (department witness No.2) and Jagdish Chander, Sub-Inspector (department witness No.3). The workman / delinquent official was provided with opportunity to cross-examine all the aforesaid 3 witnesses. The workman / delinquent official has cross-examined Hardayal Singh, Inspector and the cross-examination of witnesses Bahadur Singh and Jagdish Chander, Sub-Inspectors is recorded as nil, although opportunity was given. Besides, the workman / delinquent official got recorded his statement on 07.04.2015 before the Presenting Officer and the Inquiry Officer that he does not intend to adduce any evidence and there are 4 Inspectors in his case and he intends to get conducted his inquiry on the basis of statements of 3 Inspectors examined in inquiry and further that the reply to the charge-sheet may be considered as his statement. AW1 Dinesh Kumar when put to cross-examination admitted as correct that Traffic Manager was appointed as Inquiry Officer to conduct inquiry in his charge-sheet. AW1 admitted as correct that he appeared in the inquiry proceedings. AW1 stated that he did not engage any co-worker as his defence representative to defend his inquiry proceedings. From the aforesaid version of AW1 and the record of inquiry proceedings, it is sufficiently proved on record that the workman / delinquent official has availed full opportunity to cross-examine the witnesses examined by the department and to lead his own defence evidence. Thus, no prejudice is proved to have been caused to the interest of workman / delinquent official. The contents of the charge-sheet are self-explanatory of the details of allegations against the workman. The judgments referred by Learned Representative for the workers union reported in **1992 (1) SCT 258 P&H** titled as **Hans Raj Gupta Versus State of Punjab** and **2017 (3) CLR 753 P&H** titled as **Dayalbagh Spinning and Weaving Mills Versus The Govt. of Punjab & Others** are not applicable to the facts of the present case.

19. Learned Representative for the workers union contended that the Inquiry Officer himself acted as a Presenting Officer due to which the inquiry proceedings stand vitiated. On the other hand, Learned Government Pleader for the management contended that vide order dated 30.01.2015 / Exhibit 'M4', two separate officials i.e. Traffic Manager, Kalka and Establish Assistant were appointed as Inquiry Officer and Presenting Officer respectively to conduct inquiry into charge-sheet No.1752 dated 22.01.2015 against Dinesh Kumar, Conductor. To my opinion, the contention raised by Learned Representative for the workers union that Inquiry Officer himself acted as Presenting Officer is devoid of merits because as proved from order dated 30.01.2015 passed by the General Manager, Haryana Roadways / Exhibit M-4, Traffic Manager, Kalka was appointed as Inquiry Officer and Establishment Assistant (Sthapna Sahayak) was appointed as Presenting Officer to conduct inquiry into the charge-sheet dated 22.01.2015 issued against Dinesh Kumar, Conductor No. 207/380. The perusal of the inquiry file would reveal that the Presenting Officer has examined the witnesses in the presence of workman / delinquent official as well as the Inquiry Officer and the inquiry report has been prepared by the Inquiry Officer after appreciating the evidence on record.

20. Learned Representative for the workers' union argued that copy of inquiry report has not been supplied to the workman / delinquent official which is violation of principle of natural justice. To support his argument Learned Representative for the workers union referred judgment reported in **2022 (3) CLR 814 M.P** titled as **State Bank of India Versus Tarun Kumar Pradhan & Others**. On the other hand, Learned Government Pleader for the management argued that the copy of the inquiry report was supplied to the workman / delinquent official along with the show-cause notice dated 14.05.2015 / Exhibit 'M6'. To my opinion, the arguments raised by the Learned Representative for the workers' union that the copy of inquiry report has not

been supplied to the workman / delinquent official is devoid of merits because AW1 Dinesh Kumar in his cross-examination stated that he was not supplied with copy of inquiry report. AW1 admitted as correct that before passing the punishment order he was issued a show-cause notice. As per the contents of show-cause notice, the copy of the inquiry report was supplied to the workman / delinquent official for information. In this regard, Para 1 of the show-cause notice reads as under :-

*"The enquiry officer appointed to enquire into the charges levelled against you vide General Manager Haryana Roadways, Chandigarh memo No.1752/ECC dated 22/1/K has submitted his report. A copy of report is enclosed for your information."*

21. AW1 in his cross-examination stated that he had filed reply to the show-cause notice. The perusal of reply dated 21.05.2015 filed by the workman to the show-cause notice dated 14.05.2015 would reveal that the workman in Para 2 of his reply has commented upon the Inquiry report and the comments on the inquiry report are possible only if the inquiry report is supplied to the workman. The translated version from Hindi to English Language of Para 2 of reply dated 21.05.2015 to show-cause notice dated 14.05.2015 is reproduced as below :-

*"Inquiry officer, during inquiry has given importance only to official witnesses and the statement presented by me has not been considered and I have been held guilty though I have not committed any offence. I have not taken any money and returned the balance. In case I had something in my mind then why should I apprise the Inspectors with the entire situation. The Inspectors would have checked my cash. Despite my request the Inspectors did not check my cash and by tearing off my un-punched tickets, false report has been prepared against me. Although, I have not committed any offence."*

22. Much stress has been laid upon the fact by Learned Representative for the workers' union that the compliance of Rule 7(b) of Haryana Civil Services (Punishment & Appeal) Rules, 2016 to provide co-worker assistance to the delinquent official has not been made. To my opinion, the aforesaid contention raised by Ld. Representative for the workers' union lacks merits as MW1 Sanjay Kumar in his cross-examination stated that as per record no co-worker assistance was provided to the workman. MW1 denied the suggestion as wrong that it is mandatory under Rule 7(b) of Haryana Civil Services (Punishment & Appeal) Rules, 2016 to provide co-worker assistance to the delinquent official. MW1 voluntarily stated that the present case pertains to year 2015 and the Civil Services Rules, 2016 are not applicable to the case of the workman. Learned Representative for the workers union failed to controvert the fact that Haryana Civil Services (Punishment & Appeal) Rules, 2016 have prospective effect and apply retrospectively to the inquiry proceedings of the workman conducted in the year 2015. There is no lacuna in the inquiry proceedings.

23. Learned Representative for the workers' union further contended that the instructions issued by Head Quarter vide order No.5995/6018/T-1 dated 25.04.2014 are not followed by the checking staff. Learned Representative for the workers union contented that MW1 in his cross-examination deliberately denied the knowledge of the above said instructions whereby the cash of the conductor is to be checked during the course of checking and the same may be detailed in the way bill. To my opinion, it is for the workers' union to prove on record the instructions issued vide order No. 5995/6018/T-1 dated 25.04.2014, if any. In the present case, no such instructions are proved into evidence by the workers' union.

24. Admittedly workman had filed written reply on 21.05.2015 to the show-cause notice Exhibit 'M6'. As per Punishment Order dated 15.06.2015 (Endst. No.12493-94/ECC dated 17.06.2015) / Exhibit 'W3', the reply to charge-sheet, inquiry report and reply to the show-cause notice was considered. Apart from that opportunity for personal hearing was also given to the workman by the punishing authority. The Punishment Authority agreed with the inquiry report and passed Punishment Order dated 15.06.2015 whereby two annual increments of the workman were stopped without cumulative effect and it was ordered not to give benefit during his suspension period w.e.f. 12.01.2015 to 11.03.2015. Admittedly workman filed appeal dated 21.05.2015 before Director General, State Transport Haryana against the Punishment Order dated 15.06.2015. Thereafter, vide letter dated 29.05.2015 which is the part of the inquiry file, notice for personal hearing was given to the workman directing him to appeal before General Manager, Haryana Roadways, Chandigarh on any working day at 10:00 A.M. within 15 days. AW1 / Dinesh Kumar when put to cross-examination stated that he had filed appeal against the Punishment Order. AW1 further stated that he was given personal hearing

by the Appellate Authority. Undisputedly, the appeal against the punishment order dated 15.06.2015 (date of endorsement 17.06.2015) was rejected vide order dated nil endorsement No.8/21-2016/A4/E3 dated 10.08.2016 passed by the Joint Transport Commissioner and punishment order dated 15.06.2015 (date of Endst. 17.06.2015) was upheld.

25. The grievance of workman is that he has been awarded two punishments i.e. stoppage of two annual increments without cumulative effect and denial of salary for the period of suspension beyond subsistence allowance. Learned Representative for the workers' union argued that denial of pay of suspension period is illegal. When only minor punishment is imposed then pay of suspension period cannot be denied because that shall have harsh consequences than to the substantive punishment imposed on the workman / delinquent official. To support his argument Learned Representative for workers union referred the judgment dated 14.07.2009 passed by **the Hon'ble High Court of Punjab & Haryana in CWP No. 21304 of 2008** titled as **Dr. M. L. Kamra & Others Versus State of Haryana & Others**. On the other hand, Learned Government Pleader for the management argued that workman was charge-sheeted for major penalty but the order of minor penalty was passed by taking lenient view. Learned Government Pleader for the management referred cross-examination of AW1 wherein he has stated that the punishment order was passed against him whereby two increments were stopped with cumulative effect and he was not given any benefit during the suspension period. AW1 admitted as correct that he was issued charge-sheet for major penalty but the order of minor penalty was passed by taking lenient view. To my opinion, it is undeniable fact that disciplinary action was initiated against the workman for major penalty and on the basis of outcome of the inquiry report, minor penalty was awarded to the workman i.e. stoppage of two annual increments with cumulative effect and denial of benefits during the suspension period w.e.f. 12.01.2015 to 11.03.2015. In the *judgment dated 14.07.2009 passed in CWP No. 21304 of 2008 (supra)* Hon'ble High Court has given the finding as below :-

*"The combined reading of these provisions would show that the justification for payment of pay and allowances would primarily depend upon the outcome of the inquiry which is held, for which the government employee is placed under suspension. If the consequential effect of the rule is seen operating harshly than the punishment awarded, then the same can certainly be termed unfair and unjust. In this background, a view is possible that it would not be fair, just and equitable to forfeit the pay and allowance of person, who was left with the award of warning only. The reason disclosed in the order of justify denial of full pay and allowances is that the petitioners were awarded warning. This reason alone to justify denial of full pay and allowances may indicate non application of mind. Rule 7.3 of Rules referred to above shows that the competent authority while passing the order was to see if the suspension was wholly unjustified. If the case is considered fit enough to be disposed of by award of warning then it can be said that there was hardly any requirement to place the petitioners under suspension. It is thus possible to say that the suspension was unjustified. As per the rule, competent authority is called upon to conclude that the suspension of the said servant was not wholly unjustified. The impugned order does not give any indication if this aspect of the rule was taken into consideration. This aspect of consideration is wholly absent. This order, even otherwise, would be much more damaging than the order of punishment. The impugned order thus cannot be sustained. The same is set aside. The petitioners would be entitled to full pay and allowances for the period they had remained under suspension."*

26. The aforesaid judgment is applicable to the facts of the present case. Accordingly, when only minor punishment is awarded, then pay of suspension period cannot be denied and the denial of full pay beyond subsistence allowance during the suspension period is unjustified. Consequently, workman is entitled to full pay i.e. pay beyond suspension allowance for the period he remained under suspension. However, the inquiry proceedings are proved to have been conducted in legal manner. No ground is made out to interfere in the punishment order with regard to the stoppage of two annual increments without cumulative effect.

27. Accordingly, this issue is partly decided in favour of the workers' union / workman to the extent of entitlement of the workman to full pay i.e. pay beyond suspension allowance for the period he remained under suspension and partly decided against the management.

**Issue No. 2 & 4 :**

28. Both these issues are taken up together being inter-connected and in order to avoid repetition of discussion.

29. Onus to prove both these issues is on the management.

30. Learned Government Pleader for the management argued that claimant-workman has no locus-standi. Workman has not filed any representation against the order dated 10.08.2016 of appellate authority and raised the demand notice in the year 2021 which is barred by limitation. On the other hand, Learned Representative for the workers' union argued that the workman has exhausted the legal remedy of appeal against the punishment order. On dismissal of appeal, the workman was left with no other option than to challenge the punishment order as well as order of appeal by raising an industrial dispute by issuing a demand notice. As discussed in Issue No.1 above, the denial of benefits during the suspension period is held illegal. The denial of benefits during the suspension period which includes non-payment of salary beyond the suspension allowance is recurring cause of action and the bar of limitation does not apply. On dismissal of appeal against the punishment order, the workman was left with no other option than to seek remedy under the ID Act. Thus, workman has a valid cause of action. The judgments referred by Learned Government Pleader for the management reported in *2007(2) SCC 725* titled as *A.P. Steel Re-Rolling Mill Ltd. Versus State of Kerala*; *2006 (11) SCC 464* titled as *U.P. Jal Nigam & Another Versus Jaswant Singh & Another* and *2013 (6) SLR 629 SC* titled as *State of Uttaranchal & Another Versus Sh. Shiv Charan Singh Bhandari & Others* are not applicable to the facts of the present case.

31. Accordingly, both these issues are decided against the management and in favour of the worker's union / workman.

**Issue No. 3 :**

32. Onus to prove this issue is on the management.

33. It is argued by Learned Government Pleader for the management that this court has no jurisdiction to entertain the present application. The aforesaid argument advances by Learned Government Pleader for the management is devoid of merits as the ID Act is applicable to the services of the workman. The workman is seeking remedy through the workers' union under Section 2(k) of the ID Act. This court is well within its jurisdiction to try and decide the present case / Industrial Disputes Reference.

34. Accordingly, this issue is decided against the management and in favour of the workman / workers' union.

**Relief :**

35. In the view of foregoing finding on the issues above, this industrial dispute reference is partly allowed and answered in favour of the workers' union / workman to the extent of entitlement of the workman to full pay i.e. pay beyond suspension allowance for the period he remained under suspension. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 01.01.2024.

CHANDIGARH ADMINISTRATION  
LABOUR DEPARTMENT

**Notification**

The 18th March, 2024

**No. 13/2/78-HII(2)-2024/4443.**—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **78/2021** dated **14.12.2023** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SURESH KUMAR S/O SH. MILAP SINGH, HOUSE NO.331, VILLAGE BEHLANA, CHANDIGARH. (Workman)

AND

1. M/S CHECKMATE SERVICE PVT. LTD., SCF NO. 128, PHASE-3-B2, DISTRICT MOHALI THROUGH ITS MANAGING DIRECTOR.
2. AXIS BANK LTD., AXIS BANK CURRENCY CHEST, SECTOR 34, CHANDIGARH THROUGH ITS BRANCH MANAGER (Management)

**AWARD**

1. Suresh Kumar, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 11.06.2016 the claimant-workman was appointed by management No.1 i.e. M/s Checkmate Services Pvt. Ltd., Mohali as Cash Sorter. The claimant-workman was deployed at the workplace of management No.2 i.e. Axis Bank Ltd., Axis Bank Currency Chest, Sector 34, Chandigarh. The claimant-workman remained there in the continuous employment up to 11.02.2021 when his services were illegally & wrongfully terminated by refusing of work. The claimant-workman was drawing ₹ 17,000/- per month as wages at the time of termination. On 12.02.2021 the claimant-workman went to attend his normal duty but he was refused work by management No.2 on the pretext that the management No.1 has asked them to refuse work to the worker. No reason of refusal of work was given to the claimant-workman by both the managements. The refusal of work, which amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The management No.1 has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the claimant-workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For his reinstatement the claimant-workman served upon the management a demand notice dated 15.02.2021. After receiving the demand notice dated 15.02.2021, the management sent a letter dated 22.02.2021 to the claimant-workman, which was received by him on 01.03.2021 on the subject 'Absenteeism Letter'. In the letter the management alleged that the claimant-workman is absent from duty from 12.02.2021 without obtaining any prior permission / sanctioned leave. He was asked to report for duty at Ahmedabad. The claimant-workman vide his letter dated 02.03.2021 denied the alleged charge of absenteeism. The letter was duly received by the management. The claimant-workman was asked the reason for reporting of duty at Ahmedabad whereas he is working at Chandigarh. The claimant-workman further informed the management that he is ready to join his duty at Chandigarh with immediate effect. But the management till date has not replied the letter. The management neither denied the contents of the demand notice nor took the claimant-workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The management No.1 appeared before the Conciliation Officer, U.T. Chandigarh one time only and thereafter he did not appear before the conciliation on any date fixed for settlement. The termination is illegal, wrongful, motivated against the principles of natural justice and unfair labour practice. The claimant-workman remained unemployed during the period i.e. from the date of termination to till date. Prayer is made that the claimant-workman be reinstated with continuity of service along with full back wages and without any change in his service condition.

3. On notice, management No.1 contested the claim statement by filing written reply dated 12.11.2022 (filed on 06.12.2022) wherein it is stated that the date of commencement is correct but the answering management did not terminate any employee. It is denied as incorrect that both these managements refused work to the claimant-workman. Since no termination was done, thus retrenchment benefits, charge sheet, inquiry to be held before termination etc. are not applicable. The employees collectively absented and refused to come to work, the matter was taken up with disciplinary action, Checkmate Security Services have made sufficient representation at Labour Department. The applicant's plea that action of the management is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice is not acceptable. The claimant-workman's plea of demanding reinstatement with back wages, continuity of service and without any change in service condition etc. is not acceptable. No such intentions and acts were initiated by employer but all outstanding efforts were made to get the employee to work as the company had to face huge losses.

4. Management No.2 contested the claim statement by filing separate written statement dated 01.11.2022 (filed on 01.11.2022) wherein preliminary objection is taken on the ground that the claim statement is not legally maintainable as there is privity of contract between claimant-workman and the answering management and the claimant-workman was never hired by the answering management.

5. On merits, it is denied for want of knowledge that on 11.06.2016 the claimant-workman was appointed as Cash Sorter by management No.1. The answering management had hired the services of management No.1 but appointment and termination of any worker was the sole discretion of management No.1 and the answering management has no role to play in it. The alleged the claimant-workman was not on the roll of bank nor employee of the bank nor even any salary was paid to him by the answering management. No refusal as alleged by the claimant-workman was conveyed by the officials of the answering management. No alleged demand notice was ever served upon the answering management and also no notice was received by the answering management from the office of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh. The claimant-workman never remained employee or worker of the answering management. Rest of the averments of the claim statement are denied being incorrect and prayer is made that claim statement may be dismissed with cost.

6. The claimant-workman filed rejoinder to the written statement of management No.1 on 17.01.2023 wherein contents of the written statement except admitted facts are denied and averments of claim statement are reiterated. Rejoinder to written statement of management No.2 was not filed.

7. From the pleadings of the parties, following issues were framed vide order dated 20.03.2023 :-

1. Whether the termination of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits as prayed for ? OPW
3. Whether the claim statement qua management No.2 is not maintainable? OPM (management No.2)
4. Relief.

8. In evidence, Learned Representative for the workman tendered documents i.e. demand notice dated 15.02.2021 raised by the workman to the Managing Director M/s Checkmate Services Pvt. Ltd. and Branch Manager, Axis Bank Limited, Sector 34, Chandigarh vide Exhibit 'W1' and failure report bearing Memo No.1386 dated 05.07.2021 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh relating to the demand notice raised by the workman vide Exhibit 'W2' and closed evidence of workman on 08.09.2023.

9. On the other hand, management No.2 examined MW1 Amit Rajpal - Senior Manager, Axis Bank, Sector 34, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'.

10. Management No.1 examined MW2 Jaspal Singh - DGM (Banking) of M/s Checkmate Services Pvt. Ltd., Phase 3B-II, SAS Nagar Mohali, who tendered into evidence his affidavit vide Exhibit 'MW2/A' along with notary attested copies of documents Exhibit 'MW2/1' to Exhibit 'MW2/6'.

**Exhibit 'MW2/1'** is authority letter dated 28.03.2019 in Jaspal Singh issued by the Managing Director & Company Secretary of management No.1.

**Exhibit 'MW2/2'** is aadhar card of Jaspal Singh.

**Exhibit MW2/3'** is warning letter dated 12.02.2021 issued to the workman by the authorised signatory of management No.1 through courier.

**Exhibit 'MW2/3-A'** is original receipt of DTDC Courier Agencies.

**Exhibit 'MW2/4'** is absenteeism letter dated 22.02.2021 for not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

**Exhibit 'MW2/4-A'** is original postal receipt dated 24.02.2021.

**Exhibit 'MW2/5'** is letter dated 17.03.2021 for final intimation on not reporting on duty issued to the workman by the authorised signatory of management No.1 through registered post.

**Exhibit 'MW2/5-A'** is original postal receipt dated 19.03.2021.

**Exhibit 'MW2/6'** is original undelivered courier envelop bearing remarks 'refused'.

11. In cross-examination of MW2 conducted by the workman, MW2 brought into evidence photocopy of movement order of the claimant-workman vide Mark '1'.

12. On 16.11.2023 Learned Representative for management No.2 closed the evidence on behalf of management No.2. On 06.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed oral evidence. On 14.12.2023 Shri Baljinder Pal Singh - Representative for management No.1 closed documentary evidence.

13. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

**Issue No.1 to 3 :**

14. Onus to prove issue No.1 & 2 is on the workman and onus to prove issue No.3 is on management No. 2.

15. Under these issues, Learned Representative for the claimant-workman referred documents Exhibit 'W1' and Exhibit 'W2' and contended that the workman raised the industrial dispute by issuing a demand notice alleging that he was appointed as Cash Sorter on 11.06.2016 by the management of checkmate Services Pvt. Ltd., Mohali and was deployed at the work place of Axis Bank Ltd., Axis Bank Currency Chest, Sector 34, Chandigarh. He remained there in continuous employment up to 11.02.2021. On 12.02.2021 when the workman went to attend his normal duties, he was refused work by the management of Axis Bank Limited on the pretext that the management of M/s Checkmate Services Pvt. Ltd. has asked them to refuse work to the worker. The last paid monthly wages of the workman were ₹ 17,000/-. The workman by way of demand notice Exhibit 'W1' has challenged the action of the management being illegal and is seeking reinstatement with full back wages and continuity of service.

16. Management No.1 has examined MW2 Jaspal Singh - DGM (Banking), who vide his affidavit Exhibit 'MW2/A' deposed that he is working with management No.1 as Deputy General Manager (Banking) with Employee Code EMP/COR006558, Office at SCF 128, Phase 3B-II, SA S Nagar, Mohali from 06.05.2014 and he is personally aware of the facts of this case. Management No.1 is a company registered as per the provisions of the Company's Act, 1956. Management No.1 is engaged in business of providing security services, cash sorter services across the India to its customers on the basis of requirement and as per contract terms and agreement. Contrary to the workman's claim of illegal termination, he submits that the employment of the claimant-workman was not terminated rather transferred to another location in accordance with company's policies and operational requirements. The decision to transfer the claimant-workman was made after due consideration of company's business needs and without any malice or intent to cause harm to the claimant-workman. Due to exigency of work in the other location of management No.1, he as

DGM (Banking) transferred the following four employees to their Ahmedabad office as per company's requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

These employees were transferred to their Ahmedabad office. They were given transfer letters given by hand to report to Checkmate, Ahmedabad Office under his instructions (as per company's requirement) on 11.02.2021 but they refused to accept. After that the transfer letter was sent by DTDC Courier on dated 12.02.2021 and they refused to accept again. These letters were given in person which they refused to accept. They were briefed regarding the transfer, which they refused to accept, return letter with remarks of refusal. The transfer letters were displayed on the notice board of the Axis Bank on same day i.e. on 11.02.2021. On 12.02.2021, he was on leave and was attending function at his home town, when he received a call from Mr. Ritesh Kumar - Branch Manager, Axis Bank, stating that no employee of Checkmate Services had reported for duty and when they and he had tried to contact their employee, they were absent. The claimant-workman stated that they will not come to work and all were not willing to come for duty any more. He informed about the mass absenteeism by the claimant-workman and repeated calls were received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employee who have not come on duty, the bank will not accept such un-authorised absence from their staff as bank work stuck up due to cash sorter not reporting for duty. He kept on calling absentee employees from his phone but his phone was not picked by any of the absent employees for the next 2 days i.e. 12.02.2021 to 14.02.2021. On resuming his office on 15.02.2021, he himself again tried to contact the absconding employees, only Mr. Ravi Kumar, EMP/CHD05592 and Mr. Pankaj Kataria, EMP/CHD/03936 picked the call and agreed to come to Mohali Office SCF 128, Phase 3B-II, SAS Nagar Mohali. On next day i.e. 16.02.2021 he himself tried to convince both the absconded employees to resume their duties as the bank officials were putting lot of pressure and the work stoppage had very negative impact on the bank services and their reputation and high penalty clause in the agreement. Both the employees Mr. Ravi Kumar and Mr. Pankaj Kataria were ready to understand and joined the duties but stated that other fellow employees had threatened them not to join the duty. Meanwhile they have appointed new staff in place of absconded employees to fill the bank requirement and their repetition as service provider as well to avoid high penalty of non-providing contractual staff as per agreement. They have also approached the absconded staff to join duty at the other place. They have requirement at Ahmedabad, for that they had sent the letter through RP/AD post letter dated 11.02.2021 as well sent the absenteeism letters on 22.02.2021 and final letter on 17.03.2021 to the claimant-workman to join duty as his services has not been terminated nor any violation of his appointment services conditions. In the case of Namrata Verma Versus the State of Uttar Pradesh and Others, Hon'ble Supreme Court of India in case number Special Leave to Appeal (C) No(s).36717/2017 it was established that employer has the right to transfer employee as per the business requirement of the employer. He asserts that the management has never terminated the services of the claimant-workman. On the contrary the management has provided multiple opportunities to the claimant-workman to re-join duty even after a mass absconding incident incurred. The claimant-workman however failed to respond or re-join and instead engaged in mass absconding without any prior intimation. This action appears to be an attempt to harass both the managements to coercive tactics by the claimant-workman. The management remains willing to offer employment as there has been no formal termination of services. Consequently, there is no basis for claims related to back wages or any other form of compensation, given that the service has not been terminated. MW2 supported his oral version with documents Exhibit 'MW2/1' to Exhibit 'MW2/6' and Mark 'M1'.

17. The management No.2 examined MW1 Amit Raj Pal - Senior Manager, Axis Bank, who vide his affidavit Exhibit 'MW1/A' wherein he deposed that the present alleged claim filed by the claimant against management No.2 is legally maintainable as there is no privity of contract between claimant and management No.2 and the claimant was never hired by management No.2. Management No.2 had hired the services of

management No.1 but the appointment and termination of any worker was the sole discretion of management No.1. Management No.2 had no role to play in it. The alleged claimant was not on the roll of the bank, nor employee of the bank nor even any salary was paid to him by management No.2. No notice as alleged was ever served upon management No.2 and also no notice was received by management No.2 from the office of Additional Labour Commissioner-cum-Conciliation officer, U.T. Chandigarh. The claimant never remained employee or worker of management No.2.

18. From the oral as well as documentary evidence led by the parties it comes out that undisputedly the claimant-workman was appointed on 11.06.2016 as Cash Sorter by management No.1 and was deployed at the work place of management No.2. MW1 (witness of management No.2) when put to cross-examination by the workman admitted as correct that the Axis Bank has contract with the Checkmate Services for providing the manpower. MW1 admitted as correct that the Checkmate Services provided about 15 workers including the claimant of the present case for deployment with Chandigarh Branch of Axis Bank. MW1 stated that bank was not maintaining the attendance of contractual workers. The Supervisor of Checkmate was maintaining their attendance. The bank had not been supervising the disbursement of wages and provident fund etc. of the contractual workers. MW2 Jaspal Singh (witness of management No.1) when put to cross-examination by the workman stated that the agreement of management No.1 with the Axis Bank Ltd. / management No.2 was at central level and there was no local agreement. Under the said agreement, management No.1 provided 18 workers to management No.2 around year 2016. From the above-mentioned version of MW1 and MW2 it is duly established on record that management No.1 i.e. M/s Checkmate Services Pvt. Ltd. is service provider, who under the contract has provided security services and Cash Sorter services to management No.2 i.e. Axis Bank, Sector 34, Chandigarh and the claimant-workman was deployed by the management No.1 at the work place of management No.2 as a Cash Sorter. Since management No.1 maintained the record of attendance and supervision of work of claimant-workman through its Supervisor, thus the claimant-workman was under the direct employment of management No.1 and was a contractual worker deployed with management No.2. There is no direct relationship of employer-employee between management No.2 and claimant-workman. Since management No.2 has hired the services of claimant-workman from its service provider i.e. management No.1, therefore, management No.2 was necessary party, being principal employer, and the claim qua management No.2 is duly maintainable.

19. Admittedly, the authority to appoint, transfer and terminate the contractual employee (herein claimant-workman) was with the service provider i.e. management No.1. Learned Representative for the claimant-workman argued that the claimant-workman remained in continuous employment of the management No.1 from the date of appointment i.e. 11.06.2016 up to 11.02.2021, thus completed 240 days of continuous service in 12 calendar months preceding termination of his services (service being verbally terminated on 12.02.2021). The claimant-workman has alleged that his last drawn wages were ₹ 17,000/- per month. In this regard MW2 (witness of management No.1) was put to cross-examination by workman stated that there is no dispute with regard to the date of appointment, amount of monthly salary and the date of dispensing with of their services. MW2 further stated that all the workers including the workman had continuously worked for more than 240 days in 12 calendar months preceding their absence from duty.

20. Management No.1 has taken the plea that 15 contractual workers were deployed with management No.2. On 11.02.2021, out of 15 contractual workers, 4 workers namely Ravinder, Joginder Pal, Suresh Kumar (Suresh Kumar, workman in the present case) and Ajay Kumar were transferred to Ahmedabad. 4 workers, who were transferred, refused to accept the transfer letter and refused to join at Ahmedabad. The transfer-cum-movement order was also affixed on the notice board of management No.2 i.e. Axis Bank Limited. In order to put pressure upon the management No.1 to cancel the transfer order of four employees all 15 contractual workers collectively absented from duty w.e.f. 12.02.2021. After extensive follow-ups, 2 workers returned to duty with the same employment terms & conditions whereas the remaining 13 including the workman of the present case did not resume duty. The workman Suresh Kumar failed to report on duty at Ahmedabad as directed vide movement order Mark 'M1'. It is further argued by Learned Representative for management No.1 that M/s Checkmate Service Pvt. Ltd. has not terminated the service of any of the workman in any manner. Management No.1 has followed due procedure issuing absenteeism letters and reminders, emphasising

the company's intent for workman to resume duty. Management No.2 made various efforts to personally serve the movement-cum-transfer order to the claimant-workman but he refused to receive. Management No.1 also issued warning letter dated 12.02.2021 / Exhibit 'MW2/3' through courier vide receipt Exhibit 'MW2/3A', issued another absenteeism letter dated 22.02.2021 / Exhibit 'MW2/4' vide postal receipt Exhibit 'MW2/4A' and final intimation for not reporting on duty vide letter dated 17.03.2021 Exhibit 'MW2/5' through registered post vide Exhibit 'MW2/5A'. Despite issuance of various letters, the claimant-workman did not join back the duty, thus, the claimant-workman himself abandoned the job, though his services were never terminated by management No.1. The workman failed to report to his duty at the work place without any prior notice or explanation which is a clear violation of company's policy and established work expectations. The employer has the inherent right to manage its work force including making decisions regarding re-location. Management No.1 has acted in accordance with its established policies and procedures which were communicated to all the employees by all means to join duty.

21. On the other hand, Learned Representative for the workman contended that neither the original movement order / transfer order nor carbon copy of the same is brought into evidence by management No.1 despite availing opportunity to produce the same. Furthermore, the alleged transfer order / movement order is violation of Section 9-A of the ID Act and in contravention to The Fourth Schedule to Section 9-A of the ID Act.

22. As proved from cross-examination of MW2 Jaspal Singh (witness of management No.1), the workman had continuously worked for more than 240 days in 12 calendar months preceding his alleged absence from duty, the claimant-workman fulfills the requirement of continuous service as defined in Section 25-B of the ID Act. Once the workman is covered under Section 25-B of the ID Act, then the provision of Section 25-F of the ID Act stands attracted. For better appreciation Section 25-F of the ID Act is reproduced as below :-

***"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-***

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

23. Section 25-F of the ID Act lays down certain conditions which are precedent to retrenchment of workman. In the present case, the management No.1 has taken the plea that the claimant-workman absented from duty w.e.f. 12.02.2021. As per plea of management No.1, the claimant-workman was transferred to Ahemdabad by issuing movement order but the claimant-workman failed to report on duty at Ahemdabad as per the directions given in the movement order. MW2 Jaspal Singh in his cross-examination (recorded on 30.11.2023) denied the suggestion as wrong that vide letter dated 17.03.2021 / Exhibit 'MW2/5' the services of the workman were terminated. To my opinion, the denial on part of MW2 that the management did not intend to terminate the services of the workman by issuing letter dated 17.03.2021 / Exhibit 'MW2/5' is not acceptable because in his further cross-examination MW2 admitted as correct that vide letter Exhibit 'MW2/5' the workman was directed to complete his clearance formalities for full & final settlement. The aforesaid admission on part of MW2 would suggest that the management No.1 intended to effect full & final settlement with the workman, which can be done only when the workman is relieved from service and not during continuity of his service.

24. As far as movement / transfer order is concerned, MW2 in his cross-examination (conducted by the workman) recorded on dated 30.11.2023 stated that the workers Ravinder, Joginder Pal, Suresh Kumar

S/o Milap Chand and Ajay were transferred from Chandigarh to Ahmadabad. He is in possession of carbon copies of movement orders issued to aforesaid workers directing them to report at the transferee station. Today, he has not brought the copies of the movement orders. MW2 further stated that except the movement orders, there is no other separate transfer orders of workers. Remaining cross-examination of MW2 on 30.11.2023 was deferred for producing the alleged movement order by the witness. MW2 when recalled for his remaining cross-examination on 06.12.2023, stated that original and the carbon copies of the movement order / orders are not traceable. He has brought photocopy of movement order relating to workman Suresh Kumar and the same is Mark 'M-1'. In this manner management No.1 despite availing opportunity failed to sufficiently prove into evidence the alleged movement / transfer order of the claimant-workman. The document Mark 'M-1' is a photocopy, its original or carbon copy is produced into evidence, therefore, no authenticity is attached to Mark 'M-1'. Above all management No.1 in its written statement nowhere pleaded that the claimant-workman was ever issued any movement order / transfer order and that the claimant-workman did not report on duty at Ahmedabad. It is not the case of management No.1 that they have ever received any intimation from Branch Office of management No.1 at Ahmedabad that the claimant-workman did not report on duty as per the movement order. In this regard, MW2 in his cross-examination dated 30.11.2023 stated that no intimation was received from their branch office at Ahmedabad that the workman did not turn up to join duty. MW2 Jaspal Singh in his cross-examination stated that in the written reply filed by management No.1, it is nowhere mentioned that the worker was transferred from Chandigarh to some other place. MW2 in his cross-examination admitted as correct that there is no reference of Ahmedabad in letter Exhibit 'MW2/3' to Exhibit 'MW2/5'.

25. The management's plea that the workman was transferred as per company's policy is devoid of merits because there is no evidence of management No.1 to prove the fact that the service of the workman was transferrable. The nature of job being transferable or non-transferable can be ascertained either from the appointment letter or certified standing orders of the company (herein management No.1). In the present case, neither there is any appointment letter of the workman issued by management No.1 nor there is any certified standing orders of management No.1. It is not case of the management No.1 that there was any settlement between the workman and management No.1 relating to transfer policy. MW2 in his cross-examination stated that the employees deputed in the territory U.T. Chandigarh are issued appointment letters and transfer orders from Chandigarh office of M/s Checkmate Services Pvt. Ltd. / management No.1. As discussed above, in the present case neither any appointment letter nor any transfer order is proved into evidence. In the absence of appointment letter, Certified Standing Orders and any settlement between the parties, The Fourth Schedule and Section 9-A of the ID Act would be attracted if the transfer of the workman results in change of service conditions.

26. Undisputedly, the workman was drawing ₹17,000/- as wages per month at the time of termination. MW2 in his cross-examination stated that the workman was verbally told that wages to him at Ahmedabad will be paid as per the minimum wages of that state. Management No.1 did not prove into evidence the Minimum Wage List of Ahmedabad (Gujarat). However, during course of arguments Learned Representative for the management No.1 failed to controvert the contention of Learned Representative for the workman that minimum wages at Ahmedabad are much lesser than the monthly wages drawn by the workman at Chandigarh. As per Section 9-A of ID Act, no employer who proposes to effect any change in the condition of service applicable to any workman in respect of any matter specified in Fourth Schedule, shall effect such change,-

- (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
- (b) within twenty-one days of giving such notice:  
Provided that no notice shall be required for effecting any such change -
- (a) .....
- (b) .....

27. The Fourth Schedule of the ID Act incorporates conditions of service for change of which notice is to be given. The relevant conditions mentioned at serial No.9 and 11 of The Fourth Schedule of ID Act are reproduced as below :-

*"9. Introduction of new rules of discipline, or alteration of existing rules, except in so far as they are provided in standing orders.*

*11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift (not occasioned by circumstances over which the employer has no control)*

28. MW2 in para 5 of his affidavit Exhibit 'MW2/A' deposed that due to exigency of work in other locations of respondent No.1 requirement, he as the DGM Banking, transferred the following employees to their Ahmedabad office as per company requirement :-

- i) Mr. Joginder Pal S/o Gian Chand, Employee Code EMP/CHD00746
- ii) Mr. Ajay Kumar S/o Ram Dular, Employee Code EMP/CHD00748
- iii) Mr. Suresh Kumar S/o Milap Chand, Employee Code EMP/CHD00749
- iv) Mr. Ravinder S/o Ram Nath, Employee Code EMP/CHD00752

29. In the present case, first of all the aforesaid plea taken by MW2 in his examination-in-chief by way of affidavit Exhibit 'MW2/A' is beyond pleadings. Secondly, MW2 in para 8 of his affidavit Exhibit 'MW2/A' deposed that he informed about the mass absenteeism by the applicant and repeated calls received from Mr. Ritesh - Branch Manager, Axis Bank for deficiency in services and he would not accept any contract employees, who are not coming on duty, the bank will not accept such un-authorised absence from their staff, as Bank work was stuck up due to Cash Sorter not reporting for duty. The aforesaid version of MW2 is also beyond pleadings. Besides Axis Bank / management No.2 in its written statement / reply nowhere mentioned that Mr. Ritesh - Branch Manager, Axis Bank telephonically informed the management No.1 about any un-authorised absence of the workman from duty. Management No.1 and 2 did not examine Mr. Ritesh - Branch Manager in their evidence. Moreover, there is no documentary evidence on record to show the company's requirement at Ahmedabad office of management No.1. Under these circumstances, the transfer of the workman from Chandigarh to Ahmedabad on lesser monthly wages amounts to change in his service conditions. Section 9-A and The Fourth Schedule of the ID Act prohibits imposing any change in service condition without notice. Section 9-A of the ID Act requires employer proposing to adversely change certain service conditions of covered workman to provide notice of 21 days of the proposed change to the impacted workman. In the present case, it is own plea of management No.1 that transfer order was of 11.02.2021 directing the workman to join at other location at Ahmedabad on 12.02.2021. Before issuing the alleged transfer order / movement order management No.1 failed to provide notice of 21 days to the concerned workman, which is violation of The Fourth Schedule and Section 9-A of the ID Act.

30. If for the sake of arguments, it is assumed that the claimant-workman absented from duty w.e.f. 12.02.2021, then also at the most it amounts to misconduct and since the workman fulfills the requirement of Section 25-B of the ID Act, thus management No.1 was bound to comply with the conditions incorporated in Section 25-F of the ID Act. But management No.1 has failed to comply with mandatory conditions as laid down in Section 25-F of the ID Act. In this regard, MW2 when put to cross-examination by the workman stated that no charge sheet was served to the workman for his alleged absence from duty. Neither any preliminary inquiry nor any regular domestic inquiry was conducted against the workman. No retrenchment compensation was paid to the worker. From the aforesaid version of MW2, it is established that management No.1 has violated the provisions of Section 25-F of the ID Act. The judgment referred by Learned Representative for the workman reported in **2014(11) SCC 85** titled as **Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Limited** is applicable to the facts of the present case to an extent. The relevant portion of the judgment is reproduced as below :-

*"Evidently, the above said mandatory procedure has not been followed in the present case. Further, it has been held by this Court in the case of Anoop Sharma v. Executive*

**Engineer, Public Health Division No.1, Panipat, 2010(3) S.C.T. 319 : 2010(5) SCC 497 as under:-**

13.... no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months. This Court has repeatedly held that Section 25F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity - **State of Bombay v. Hospital Mazdoor Sabha, AIR 1960 Supreme Court 610, Bombay Union of Journalists v. State of Bombay, (1964) 6 SCR 22, State Bank of India v. N. Sundara Money, (1976) 1 SCC 822, Santosh Gupta v. State Bank of Patiala, (1980) 3 SCC 340, Mohan Lal v. Management of M/s. Bharat Electronics Ltd., (1981) 3 SCC 255, L. Robert D'Souza v. Executive Engineer, Southern Railway, (1982) 1 SCC 645, Surendra Kumar Verma v. Industrial Tribunal, (1980) 4 SCC 443, Gammon India Ltd. V. Niranjan Das, (1984) 1 SCC 509, Gurmail Singh v. State of Punjab, 1991(3) S.C.T. 608 : (1991) 1 SCC 189 and Pramod Jha v. State of Bihar, 2003(2) S.C.T. 296 : (2003) 4 SCC 619.** This Court has used different expressions for describing the consequence of terminating a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as *ab initio* void, sometimes as *illegal per se*, sometimes as nullity and sometimes as *non est*. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F(a) and (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his services was not terminated."

31. MW2 Jaspal Singh, witness of Management No.1 / service provider during his cross-examination expressed his readiness to re-join the worker but refused to give him the benefit of continuity of service and back wages. In this regard, MW2 when put to cross-examination by the workman stated that we are ready to take in service absentee workers as per availability of vacancy at Chandigarh and nearby stations such as Ludhiana, Jalandhar and Panchkula. MW2 further stated that they are not ready to re-join the workers with continuity of service. They are also not ready to pay back wages for the period of their absence from duty. MW2 denied the suggestion as wrong that re-joining of a workman without continuity of service amounts to fresh appointment. To my opinion, the conditional offer of management No.1 / service provider to re-join the workman as per availability of the vacancy and without the benefits of continuity of service & back wages is unjustified because as discussed above, in this case, the termination of services of the workman is held illegal being in violation to Section 25-F of the ID Act. In case of wrongful termination of service, reinstatement with continuity of service and back wages is a normal rule. The workman is entitled to the relief of reinstatement with continuity of service under the same terms & conditions as existed before his termination.

32. As far as back wages are concerned, the claimant-workman has alleged that he remained unemployed during the period from the date of termination till date. On the other hand, none of the managements have taken plea of gainful employment in their respective written statements. However, it is argued by Learned Representative for management No.1 that as per the judgment of Hon'ble Supreme Court in **Civil Appeal No. 5390 of 2019 decided on 11th July 2019** tilted as **Chief Regional Manager, United India Insurance Company Limited United India Insurance Company Limited Versus Siraj Uddin Khan**; the principle of 'no work, no pay' applies. In case, the workman is to be reinstated he is not entitled to back wages. To my opinion, the judgment referred (*supra*) by Learned Representative for management No.1 is not applicable to the facts of the present case in view of the judgment referred by Learned Representative for the

workman tilted as *P.G.I. of M.E. and Research Versus Raj Kumar*, report in *2001(2) SCC 54*. Under the circumstances, the workman is held entitled to 50% back wages.

33. In the view of discussions made above, termination of the workman is held illegal being in violation to Section 25-F of the ID Act as such the workman is entitled to reinstatement with continuity of service and 50% back wages.

34. Accordingly, issue No.1 & 2 is decided in favour of the workman and against management No.1. Issue No.3 is decided against management No.2 and in favour of the workman.

**Relief :**

35. In the view of foregoing finding on the issues No.1 & 2 above, this industrial dispute is allowed qua management No.1. The workman is entitled to reinstatement with continuity of service and 50% back wages. Management No.1 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which management No.1 is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

Dated : 14.12.2023.

(Sd.) . . .,

(JAGDEEP KAUR VIRK)  
PRESIDING OFFICER,  
Industrial Tribunal & Labour Court,  
Union Territory, Chandigarh.  
UID No. PB0152.

Secretary Labour,  
Chandigarh Administration.

CHANDIGARH ADMINISTRATION  
HOME DEPARTMENT

**Notification**

The 28th March, 2024.

**No. 295968-HIII(3)-2024/4233.**—Whereas a scheme has been finalized by the Government of India, Ministry of Home Affairs to provide relief to poor prisoners, who are unable to pay the fine imposed on them or are unable to secure bail due to financial constraints. Now, therefore, in pursuance of the Guidelines and Standard Operating Procedure for implementation of the Scheme for support to poor prisoners circulated by the Government of India, Ministry of Home Affairs, New Delhi vide letter No. 17013/26/2023-PR dated 19.06.2023, the Administrator, Union Territory, Chandigarh is pleased to constitute the following Committees for the Union Territory of Chandigarh :—

**(a) Empowered Committee**

(i)	District Collector/District Magistrate, Union Territory, Chandigarh	<b>Chairperson</b>
(ii)	Secretary, District Legal Services Authority, Union Territory, Chandigarh	<b>Member</b>
(iii)	Superintendent of Police, City, Union Territory, Chandigarh	<b>Member</b>
(iv)	Chief Judicial Magistrate, Union Territory, Chandigarh	<b>Member</b>
(v)	Superintendent/Deputy Superintendent, Model Jail, Union Territory, Chandigarh	<b>Member Convener</b>

**Note:** This empowered Committee will assess the requirement of financial support in each case for securing bail or for payment of fine, etc. and based on the decision taken, the DC/DM will draw money from the CNA account and take necessary action.

**Note:** The Committee may appoint a Nodal Officer and take assistance of any civil society representative/social worker/District Probation Officer to assist them in processing cases of needy prisoners.

**(b) Oversight Committee**

(i)	Secretary (Home/Jail), Union Territory, Chandigarh	<b>Chairperson</b>
(ii)	Legal Remembrancer-cum-Director of Prosecution, Union Territory, Chandigarh	<b>Member</b>
(iii)	Secretary, State Legal Services Authority, Union Territory, Chandigarh	<b>Member</b>
(iv)	Inspector General of Prisons, UT, Chandigarh	<b>Member Convener</b>
(v)	Registrar General, Punjab and Haryana High Court.	<b>Member</b>

2. The above Committees shall adhere to the Guidelines and Standard Operating Procedure for implementation of the Scheme for support to poor prisoners, as circulated by the Government of India, Ministry of Home Affairs, New Delhi vide letter No. 17013/26/2023-PR dated 19.06.2023.

Chandigarh :  
The 07th March, 2024.

Administrator,  
Union Territory, Chandigarh.

**CHANGE OF NAME**

I, Sukhwinder Singh, S/o Rajwinder Singh, R/o H. No. 267/1, Sector 41-A, Chandigarh-160036, changed my name from Sukhwinder Singh to Kabir Sodhi for all future purposes.

[425-1]

I, O P Kataria, S/o Durga Dass Kataria, # 3050, SBI Society, Sector 49-D, Chandigarh, have changed my name to Om Parkash Kataria.

[426-1]

I, Sakshi Rani, W/o Sh. Vikas Rai, R/o House No. 190, Sector 38-A, Chandigarh, have changed the name of my minor daughter Kanishka to Kanishka Rai.

[427-1]

I, Sukhdev Kumar, S/o Shri Lal Chand, R/o House No. 2032, Sector 44-C, Chandigarh, have changed my name from Sukhdev Kumar to Sukhdev Kumar Sharma.

[428-1]

I, Amrita Sekhon, D/o Shri B.S. Sekhon, W/o Parminder Singh, R/o # 1841, Sector 22-B, Chandigarh, have changed my name from Amrita Sekhon to Amrita Kaur.

[429-1]

I, Davinder Pal Singh, S/o Nirmal Singh, R/o H. No. 1565, Sector 38-B, Chandigarh, declare that Devinder Pal and Davinder Pal Singh both are one and same person. In future I will be known as Davinder Pal Singh.

[430-1]

*"No legal responsibility is accepted for the contents of publication of advertisements/public notices in this part of the Chandigarh Administration Gazette. Persons notifying the advertisements/public notices will remain solely responsible for the legal consequences and also for any other misrepresentation etc."*